UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

January 23, 2018, at 3:00 p.m.

1.	**14-22500-E-13**	**JOSE ACOSTA GOMEZ AND ANA ACOSTA** **Mary Ellen Terranella**	**ORDER TO SHOW CAUSE 1-12-18 [57]**

APPEARANCE OF CHRISTINA J. O, CREDITOR'S COUNSEL, AND MARY ELLEN TERRANELLA, DEBTOR'S COUNSEL, REQUIRED AT THE JANUARY 23, 2018 HEARING

TELEPHONIC APPEARANCES PERMITTED

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)(3) 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's Attorney, and Office of the United States Trustee on January 12, 2018. By the court's calculation, 11 days' notice was provided. The court set the hearing for 3:00 p.m. on January 23, 2018. Dckt. 58.

The Order to Show Cause was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). 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 Order to Show Cause is xxxxx.

On January 8, 2018, U.S. Bank, N.A., as Trustee, ("Creditor") and Jose Gomez and Ana Maria Acosta, the Chapter 13 Debtors, ("Debtor") filed a pleading entitled "STIPULATION RE: 45722 PALM LANE, LANCASTER, CA 93535" ("Stipulation"). Dckt. 55. The Stipulation states that Creditor, through its attorney Christina J. O, and Debtor through their attorney, Mary Ellen Terranella, have stipulated that the automatic stay was not and is not in effect in this case. No motion requesting such an order has been filed.

The Stipulation includes "Recitals" that state that Debtor does not now, and has never claimed, any interest in 45722 Palm Lane, Lancaster, California. Nothing in the Stipulation indicates why Debtor would be stipulating to saying there is no automatic stay for property in which they have no interest.[1]

Federal Rule of Bankruptcy Procedure 4001(d) states the requirements for parties obtaining an order relating to the automatic stay based on a stipulation. Rule 4001(d) requires:

A. A motion for relief from the stay must be filed for relief,
B. Based on an agreement (stipulation) of the parties.

Local Bankruptcy Rule 9014-1 requires that such motion be set on either fourteen or twenty-eight days' notice. As generally provided in the Federal Rules of Bankruptcy Procedure, relief outside of an adversary proceeding must be sought by motion (or application permitted by the Federal Rules of Bankruptcy Procedure). FED. R. BANKR. P. 9013.

Here, Creditor and Debtor have failed to file such motion, but instead, they merely filed a stipulation dictating to the court the relief to be granted. Merely because a party asks for relief, the court does not merely issue a "rubber stamp" order. *See United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 130 S. Ct. 1367, 1381 n.14, 176 L. Ed. 2d 158, 173 n.14 (2010); *see also Varela v. Dynamic Brokers, Inc. (In re Dynamic Brokers, Inc.)*, 293 B.R. 489, 499 (B.A.P. 9th Cir. 2003) (citing *Everett v. Perez (In re Perez)*, 30 F.3d 1209, 1213 (9th Cir. 1994)).

Both counsel have regularly appeared in this court and are aware that the court fairly and equally applies not only the law, but the Federal Rules of Bankruptcy Procedure and Federal Rules of Civil Procedure as enacted by the Supreme Court and by Congress. Here, Creditor and Debtor have sought to operate outside said Rules.

Upon review of the Stipulation for which there is no motion, there being no contested matter pending to which the Stipulation could relate, it appearing that Creditor and Debtor are demanding that the court issue an order merely because they so instruct, and good cause appearing, the court issued this Order

[1] While the court could theorize why such an order might be requested, such theorizing should not be required because the grounds should be stated in a motion properly filed and served as required by the Federal Rules of Bankruptcy Procedure.

to Show Cause for the parties to explain to the court why such a stipulation was filed in contradiction to the pleading practice in this court.

The court ordered the parties to file written responses by January 19, 2018. Timely responses were filed by both Christina J. O and Mary Ellen Terranella. In addition, the Chapter 13 Trustee (not a subject of the Order to Appear and Show Cause) filed a Response on January 19, 2018.

Christina J. O Response

Ms. O has filed a declaration in response to the Order to Appear and Show Cause. Dckt. 61. In the Declaration, she recounts the circumstances (some of which were surmised by the court) and her legal thought processes as to why a mere stipulation was filed stating the conclusions of Creditor and Debtor, and then an order was lodged with the court based on the conclusions of Creditor and Debtor.

Ms. O states that her law firm was engaged to represent Creditor in Debtor's bankruptcy case. She states that there was a grant deed for the Lancaster Property transferring title to a "Jose Luis Acosta." Somehow, Creditor and Ms. O's law firm were "informed" that Jose Luis Acosta Gomez in this bankruptcy case might be the "Jose Luis Acosta" to whom the property was transferred.

Ms. O contacted counsel for Debtor. Based upon Debtor telling Ms. O that they had no interest in the Property, the Stipulation was prepared, filed with the court, and the order determining that there was no stay and that the bankruptcy estate had no interest in the Property was lodged with the court.

Ms. O concludes with confirming for the court that she has re-reviewed Federal Rule of Bankruptcy Procedure 4001 concerning stipulations for relief from the stay and is preparing a noticed motion requesting such relief. Further, she states that she is working to ensure that future matters in which there is a stipulation for relief will be addressed in this matter.

The Declaration does not address the issue of including in the order granting relief from the stay (the determination that there is no stay) also ordering that the Property is not property of the bankruptcy estate. Additionally, given that Creditor asserted that the Property may have belonged to Debtor and Debtor was now agreeing that it was not property of the bankruptcy estate and the bankruptcy estate would not claim any interest in it, why such was not presented to the court for approval as a "compromise" pursuant to Federal Rule of Bankruptcy Procedure 9019 is not discussed.

Mary Ellen Terranella Response

The Response by Ms. Terranella is in the form of her Declaration. Dckt. 63. Ms. Terranella recounts the history of the proof of claim being filed in this case for which the Property was listed as collateral. As Ms. Terranella notes, there were no attachments to Proof of Claim No. 7, so one could not compare the underlying note and deed of trust and signatures thereon with Debtor's signatures in this case. Further, she notes that on June 15, 2017, a Withdrawal of Proof of Claim No. 7 was filed by the agent for U.S. Bank, N.A., as Trustee.

However, Ms. Terranella does not recognize that Proof of Claim No. 7 was filed under penalty of perjury and represents an assertion (subject to civil and criminal penalties) that Creditor holds a valid claim against Debtor that is secured by real property of the bankruptcy estate. As discussed below, just because someone "withdraws" those statements made under penalty of perjury does not make those statements irrelevant.

Ms. Terranella reports that her clients confirmed that they did not have any interest in the Property. Further, Mr. Gomez told her that he has a common name, and an identification mixup would not be unusual. (Again, that is an undisclosed factor presumed by the court.)

The Declaration continues, recounting a professional and productive exchange between Ms. Terranella and other counsel at Ms. O's firm to address what they concluded to be a name misidentification issue. At this point the court notes that neither Ms. O nor Ms. Terranella identify the source of the name misidentification. Was it U.S. Bank, N.A. doing a search of debtor databases nationwide for bankruptcy filings? Was it because Ms. O's firm conducted such a search? Was it because the title company handling the foreclosure sale conducted such a search? Was it because Debtor had obtained the loan and was formerly owner of the property and had transferred it to a third-party shortly before bankruptcy? Nobody provides an explanation.

Ms. Terranella then explains to the court that based on her reading of the Fee Guidelines issues for filing fees, it provides that no filing fee is required for an agreement for relief from the stay. Ms Terranella does not identify what "Guideline" she is referencing, but the Chapter 13 Trustee does in his Response. It is the one titled "Bankruptcy Court Miscellaneous Fee Schedule, Effective December 1, 2016," which is found using the "Fee Schedule" link on the court's Filing and Fee Information webpage. FN.1.

FN.1. http://www.caeb.uscourts.gov/FilingAndFeeInformation.aspx.

The Guideline provides:

19. For filing the following motions, $181:

• To terminate, annul, modify or condition the automatic stay;

• To compel abandonment of property of the estate pursuant to Rule 6007(b) of the Federal Rules of Bankruptcy Procedure;

• To withdraw the reference of a case or proceeding under 28 U.S.C. § 157(d); or

• To sell property of the estate free and clear of liens under 11 U.S.C. § 363(f).

This fee must not be collected in the following situations:

> • For a motion for relief from the co-debtor stay;
>
> • For a stipulation for court approval of an agreement for relief from a stay; or
>
> • For a motion filed by a child support creditor or its representative, if the form required by § 304(g) of the Bankruptcy Reform Act of 1994 is filed.

To begin, this section expressly deals with the $181.00 filing fee for filing a motion. It is true that the language identified by Ms. Terranella and the Chapter 13 Trustee use the word "stipulation," but the Guideline relates to motions.

Those "Guidelines" are not statutes enacted by Congress, nor are they Rules of Procedure adopted by the Supreme Court. The Rules adopted by the Supreme Court expressly state that a motion for approval of an agreement (a stipulation is an agreement) must be filed and served as specified. FED. R. BANKR. P. 4001(d).

The Declaration continues, asserting that it is common to file stipulations and obtain orders from the court, including "stipulations to modify Chapter 13 plans." While it is true that in the past many attorneys fell into the practice of simply filing two-party stipulations and then some judges would routinely issue orders on those two party stipulations, such has not been the case in this District for at least the last eight years. True, for some scheduling two-party situations the court may "cut the corner" and extend time based on a stipulation rather than a simple joint ex parte motion, but the court does not do for substantive matters—such as terminating the stay, determining that no stay exists, and ordering that property is not property of the bankruptcy estate.

Neither the court nor any other parties in interest were presented with these contentions or evidence. Rather, the order was to be issued merely on the direction of the two parties.

Response of Chapter 13 Trustee

It appears that the Chapter 13 Trustee may have believed that he also was ordered to respond. He was not, but as always, a thoughtful response (as has been made by Ms. O and Ms. Terranella) is always helpful in these proceedings.

The Chapter 13 Trustee also directs the court to the Miscellaneous Fee Schedule at the court's website. The Chapter 13 Trustee notes that the Stipulation does not address Proof of Claim 7 that was filed, but subsequently withdrawn. The Chapter 13 Trustee states that Debtor did not list the property on the Schedules, but if the Property was Debtor's property, then it would be property of the estate notwithstanding such failure to disclose.

The Chapter 13 Trustee further offers that if the court were to recast the Stipulation as a joint ex parte motion for relief from the stay pursuant to the agreement of the parties (similar to the ex parte joint motions filed by the Chapter 13 Trustee and debtors to make "simple" modifications to a plan), the Chapter

13 Trustee would not oppose such relief. The Chapter 13 Trustee does oppose any relief beyond the relief from the automatic stay.

Court Issues as to Concern over a "Simple Stipulation"

Given the attorneys now before the court, the well-established reputations for honesty and ethical practices, and what the court could have inferred from the Stipulation, the Parties may ask—why all the theatrical production? Beginning with a basic premise, the Rules and Laws exist not only to be enforced against some. True, given the attorneys involved, the court did not have a serious belief that they were trying to defraud the court and parties in interest.

However, all of the participants in this hearing can well imagine other attorneys, creditors, and persons, past and present, who could not make such a statement. One could imagine a debtor secretly holding title to property using an alias or similar name. The creditor is a friend or cohort, possibly holding a "lien" for which there is no real debt. After the bankruptcy case proceeds and the debtor finds it not to quite his or her liking, the debtor and creditor decide it is time to move the property to safer ground. So, they file a two-party stipulation that debtor Tom Smith is not the debtor who owns the house in Malibu overlooking the ocean.

The court does not engage in trying to apply the Rules and Law only to those deemed not "trustworthy." At the very least, such creates the appearance that the court has "favorites," and the "favorites" are above the law. Worse, it leads to the "favorites" believing they are above the law and then taking improper liberties with the court.

ISSUES ADDRESSED AT THE HEARING

At the hearing, the parties reported xxxxxxxxxxx.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Order to Show Cause is xxxxxxxxx.

2.	**14-22500-E-13**	**JOSE ACOSTA GOMEZ AND ANA ACOSTA** **Mary Ellen Terranella**	**STATUS CONFERENCE RE: STIPULATION RE: 45722 PALM LANE, LANCASTER CA 93535** **1-8-18 [55]**

Debtors' Atty: Mary Ellen Terranella

Notes:
Set by court order dated 1/12/18 [Dckt 57]

3.	**16-21102-E-13** **BB-2**	**LARRY VINCELLI** **Bonnie Baker**	**MOTION TO MODIFY PLAN** **11-27-17 [123]**

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 27, 2017. By the court's calculation, 57 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(g) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is denied.

Larry Vincelli ("Debtor") seeks confirmation of the Modified Plan because he had to increase plan payments to cure deficiencies. Dckt. 125. The Modified Plan calls for plan payments of $1,300.00 per

month from November 2017 through February 2018 and then an increase to $1,757.00 beginning in March 2018. 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 January 9, 2018. Dckt. 132. The Chapter 13 Trustee opposes confirmation of the Plan on the basis that:

A. The proposed Plan does not provide for claim number five, Shasta County Superior Court ("Creditor"), which claims priority in the amount of $4,698.00, a claim to which Debtor has not objected.

B. The Chapter 13 Trustee is uncertain that Debtor has the ability to pay. The most recent Schedule J filed reflects an ability to pay $1,110.40 monthly, and no explanation is given as to how Debtor can make the proposed payments of $1,300.00 per month, increasing to $1,757.00 per month effective March 2018.

The Chapter 13 Trustee's objections are well-taken. The Chapter 13 Trustee asserts that Creditor has a claim for $4,698.00 in priority unsecured debt. Proof of Claim No. 5-1, filed on July 19, 2016. The Plan does not provide for all priority debt as required by 11 U.S.C. § 1322(a)(2).

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). The most recent Schedule J filed reflects Debtor's ability to pay $1,110.40 per month. The new plan requires a $1,300.00 monthly payment, to increase to $1,757.00 effective March 2018. Debtor fails to explain how he can make the proposed payments and does not provide any supporting documentation as to his income.

While saying that he needs to make a greater plan payment, Debtor offers no evidence that he can make such a payment. Debtor's income information from Schedule I (now almost two years old) lists Debtor having gross income of $2,133 per month (Social security, worker's comp, and "school grant"). Dckt. 1 at 34. On Schedule J, Debtor lists monthly expenses of $1,023 (which does not include mortgage, taxes, and insurance). Dckt. 10. With those bare bones expenses, Debtor squeezes out the $1,110 in Monthly Net Income to fund a plan. The reason for Debtor having such lower expenses is stated to be "Girlfriend contributes towards his essential needs by purchasing foods and supplies [for which the budget appears to already "adequately" provide], Debtor's monthly expenses are lower than one might expect." *Id.* at 2.

Debtor offers no testimony as to why he has defaulted. Debtor provides no testimony as to how he can "find" an additional $200.00 per month to fund the plan given his limited income and bare bones expenses. Additionally, for his income, Debtor has "worker's comp," which presumably is not an unending payment and some form of "school grant" which appears not to be a continuing, unending income source.

Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

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 Larry Vincelli ("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.

4. 17-23911-E-13 LBG-2 — CRAIG MASON — Lucas Garcia — MOTION TO CONFIRM PLAN — 12-8-17 [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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 8 2017. By the court's calculation, 46 days' notice was provided. 28 days' notice is required. FED. R. BANKR. P. 2002(b); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied.

Craig Mason ("Debtor") seeks confirmation of the Amended Plan to correct attorney fees provisions and claimed arrears amounts. Dckt. 57. The Amended Plan will have Debtor paying $5,750.00 from future earnings every month for sixty months. The Amended Plan also calls for attorney fees to be paid in full during the first three months of the plan, while Class 1 arrears are reduced until month four. 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 January 2, 2018. Dckt. 61. First, the Chapter 13 Trustee notes that the prior plan form has been used for the Amended Plan. As of December 1, 2017, there is a new plan form that debtors must use to present plans.

Debtor admitted at the Meeting of Creditors that the federal income tax return for the 2016 tax year has not been filed still. Filing of the return is required. 11 U.S.C. § 1308. Failure to file a tax return is grounds to deny confirmation. 11 U.S.C. § 1325(a)(1).

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor's mortgage filing with US Bank/Wells Fargo is higher than listed in the Amended Plan. Debtor has a secured claimed against him that he stated he would object to; however, there is no record of Debtor having filed an objection (to the claim of Cadle Rock III).

Finally, Debtor has failed to disclose information about a pending lawsuit including the court the matter is pending in, the case number of charges, and the name, address, and telephone number of the attorney representing him. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

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 Craig Mason ("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.

5. **17-27415-E-13** **DOUGLAS MCDAVID** **OBJECTION TO CONFIRMATION OF**
DPC-1 **Mikalah Liviakis** **PLAN BY DAVID P. CUSICK**
12-21-17 [13]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on December 21, 2017. By the court's calculation, 33 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

David Cusick ("the Chapter 13 Trustee") opposes confirmation of the Plan on the basis that: Douglas McDavid ("Debtor") admitted at the First Meeting of Creditors held on December 14, 2017, that he has not filed his tax returns during the four-year period preceding the filing of the Petition.

The Chapter 13 Trustee's objection is well-taken. Debtor admitted at the Meeting of Creditors that the federal income tax returns for the 2015 and 2016 tax years have not been filed. Filing of the return is required. 11 U.S.C. § 1308. Failure to file a tax return is grounds to deny confirmation. 11 U.S.C. § 1325(a)(1).

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

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

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

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

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

6. 16-25321-E-13 JAY COHEN ORDER TO SHOW CAUSE
RHS-1 Steele Lanphier 12-14-17 [111]

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, Chapter 13 Trustee, Creditor, and the Office of the U.S. Trustee as stated on the Certificate of Service on December 16, 2017. The court computes that 38 days' notice has been provided.

The court issued an Order to Show Cause based on Creditor's apparent admission that no pre-petition arrearage exists.

The Order to Show Cause is discharged, and the court shall enter an order determining that U.S. Bank, N.A., as Trustee, has admitted that its statement under penalty of perjury in Proof of Claim 13 that there is no arrearage is accurate and an admission that no arrearage exists on the debt that is the basis of Proof of Claim No. 13.

U.S. Bank Trust, N.A., As Trustee For LSF9 Master Participation Trust ("U.S. Bank, N.A., as Trustee") has filed Proof of Claim No. 13 in this bankruptcy case. Jay Cohen ("Debtor") commenced this Chapter 13 bankruptcy case on August 12, 2017.

On October 10, 2016, Debtor filed his Amended Chapter 13 Plan. Dckt. 31. In that Amended Plan he provides for paying the secured claim for which his residence (9029 Boise Court, Sacramento, California) is the collateral securing the claim. In addition to the post-petition current monthly payment of $1,860.00, Debtor also provided for making a monthly payment of $508.22 to cure a pre-petition arrearage

of $30,493.00. Amended Plan ¶ 2.08, *Id.* That was repeated in the Second Amended Plan, ¶ 2.08, filed on January 26, 2017. Dckt. 71. The Second Amended Plan was confirmed.

On October 31, 2017, Debtor filed a proposed Modified Plan. Dckt. 98. The proposed Modified Plan likewise provides for curing a pre-petition arrearage on the Class 1 claim. Modified Plan ¶ 2.08, Dckt. 98. The Modified Plan drew the opposition of the Chapter 13 Trustee, which grounds included that the creditor holding the Class 1 claim does not assert that any such arrearage exists.

Proof of Claim No. 13 was filed on March 27, 2017, by U.S. Bank Trust, N.A., as Trustee in which it asserts that it is the creditor holding the Class 1 secured claim that is secured by the 9029 Boise Court, Sacramento, California, property ("Boise Court Property"). Proof of Claim No. 13 states the amount of the claim is $263,954.60. Proof of Claim 13, Part 2, Question 7. That is consistent with the one secured claim listed on Schedule D for which the collateral is the Boise Court Property.

In response to Part 2, Question 9 on Proof of Claim No. 13, U.S. Bank Trust, N.A., as Trustee, expressly states that there is no pre-petition arrearage owing on this claim. U.S. Bank Trust, N.A., as Trustee, states:

> "Amount necessary to cure any default as of the date of the petition: $ 0.00 _____"

Proof of Claim No. 13, Part 2, Question 9.

The information in Proof of Claim No. 13 is made under penalty of perjury, with the authorized representative of U.S. Trust, N.A., as Trustee, expressly stating: "I declare under penalty of perjury that the foregoing is true and correct." Proof of Claim 13, Part 3.

ADMISSION OF NO PRE-PETITION ARREARAGE

Debtor, Chapter 13 Trustee, other parties in interest, and the court rely upon the Proof of Claim and the information provided therein under penalty of perjury. Though Debtor believed that there was a pre-petition arrearage, U.S. Bank Trust, N.A., as Trustee, states affirmatively that no such arrearage exists.

In confirming a Plan and committing Debtor to sixty months of performance, the court accepts Proof of Claim No. 13 as an admission that there is no pre-petition arrearage owing on the U.S. Bank Trust, N.A., as Trustee, secured claim. Confirmation of the Plan shall fix the Class 1 claim of U.S. Bank Trust, N.A., as Trustee, as being one for which no pre-petition arrearage is owed and no pre-petition arrearage shall be paid.

U.S. BANK TRUST, N.A., AS TRUSTEE, TO SHOW CAUSE WHY PROOF OF CLAIM NO. 13 NOT BE DEEMED AN ADMISSION OF THERE BEING NO PRE-PETITION ARREARAGE

U.S. Bank Trust, N.A., as Trustee, was ordered to file on or before January 9, 2018, a written response, supported by credible and admissible evidence, as to why the court should not issue an order that

U.S. Bank Trust, N.A., as Trustee, has admitted that there is no pre-petition arrearage and that Proof of Claim No. 13 and confirmation of the Chapter 13 Plan binds U.S. Bank Trust, N.A., as Trustee, to such admission. Such written response was to be served on counsel for Debtor, the Chapter 13 Trustee, and the U.S. Trustee.

If such a response was filed, counsel for U.S. Bank Trust, N.A., as Trustee, and a senior officer of U.S. Bank Trust, N.A., as Trustee, with knowledge of the secured claim in this case were ordered to appear at the 3:00 p.m., January 23, 2018 hearing on this Order to Show Cause.

If U.S. Bank Trust, N.A., as Trustee, asserted that a pre-petition arrearage exists, in addition to the above response, it was ordered to file an amended proof of claim on or before January 9, 2018, and provide an explanation, supported by credible and admissible evidence of the reason for changing such financial information provided under penalty of perjury.

The court ordered that no written response or appearance by U.S. Bank Trust, N.A., as Trustee, is required if it does not oppose the entry of a court order deeming Proof of Claim No. 13 to be an admission of no pre-petition default, deeming that such admission binds U.S. Bank Trust, N.A., as Trustee, and its successors, and determining that there is no pre-petition arrearage for the obligation stated in Proof of Claim No. 13.

DISCUSSION

No pleadings have been filed since the court issued this Order to Show Cause. U.S. Bank Trust, N.A., as Trustee, has not responded to the Order, and Proof of Claim No. 13 has not been amended.

U.S. Bank Trust, N.A., as Trustee, was ordered to respond by January 9, 2018, if it asserted a pre-petition arrearage. U.S. Bank Trust, N.A., as Trustee, did not file anything by the court's deadline and was on notice that failure to do so would be deemed an admission if U.S. Bank Trust, N.A., as Trustee, does not oppose the entry of a court order deeming Proof of Claim No. 13 to be an admission of no pre-petition default, deeming that such admission binds U.S. Bank Trust, N.A., as Trustee, and its successors, and determining that there is no pre-petition arrearage for the obligation stated in Proof of Claim No. 13.

Non-response by U.S. Bank, N.A, as Trustee, was authorized by the court, subject to U.S. Bank, N.A., as Trustee, knowing that such non-response was taken as the Bank's non-opposition to the court accepting the statement in Proof of Claim 13 made under penalty of perjury as an admission that there is no pre-petition arrearage on the debt upon which Proof of Claim No. 13 is based.

Therefore, the court treats U.S. Bank Trust, N.A., as Trustee, as not opposing. The Order to Show Cause is discharged, and the court shall enter an order.

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

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

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

IT IS ORDERED that the Order to Show Cause is discharged, and the statements in Proof of Claim No. 13 that there is no pre-petition default on the debt upon which Proof of Claim No. 13 is based are deemed to be an admission by U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust ("U.S. Bank Trust, N.A., as Trustee") of no pre-petition default. Such admission is binding on U.S. Bank Trust, N.A., as Trustee, and its successors, principals, and agents, and it is determined that there is no pre-petition arrearage for the obligation upon which Proof of Claim No. 13 is based.

7. **16-25321-E-13 SLE-2** | **JAY COHEN** **Steele Lanphier** | **CONTINUED MOTION TO MODIFY PLAN** **10-31-17 [95]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 31, 2017. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(g) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is xxxxx.

Jay Cohen ("Debtor") seeks confirmation of the Modified Plan because he recently found a salaried job that will pay regular wages. Dckt. 97. The Modified Plan proposes paying $27,580.00 through month 14 and then paying $2,953.00 per month for the remainder of the Plan with a zero percent dividend to unsecured claims. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on November 27, 2017. Dckt. 107. The Chapter 13 Trustee notes that Debtor has actually paid $30,233.00 through fourteen months of the Plan. He does not oppose an amendment in the order confirming correcting total amount paid so far.

The Chapter 13 Trustee's primary reason for opposing the Motion is that the Plan proposes to pay $30,493.00 in Class 1 arrears to a claim that was filed on March 27, 2017, without any arrears listed. That creditor has not amended its claim to include arrears, Debtor has not objected to the claim, and Debtor has not filed a claim for the pre-petition arrears.

In the Original Chapter 13 Plan, Debtor listed a $30,493.00 arrearage for this Claim. Dckt. 7 at 2. This is repeated in the First Amended Plan. Dckt. 31. This is repeated in the Second Amended Plan. Dckt. 71. The Second Amended Plan was confirmed. Order, Dckt. 86.

The proposed Modified Plan filed on October 31, 2017, again listed this Claim as having a $30,493.00 arrearage. Dckt. 98 at 2. Debtor has been consistent in stating this Claim and what Debtor computes the arrearage to be in this case.

For the Creditor's part, on September 29, 2016, counsel for Ditech Financial, LLC, asserting that it was the creditor having the Class 1 secured claim to be paid through the Chapter 13 Plan in an Objection to the Original Plan in this case. Dckt. 20. Ditech's argument was that Debtor could not afford to make the required Class 1 current mortgage payment and the arrearage payment. Ditech does not provide any evidence to support the contention that it was the creditor, nor did Ditech file a proof of claim.

On March 27, 2017 (seven months after this case was filed), U.S. Bank Trust, N.A., as Trustee, filed Proof of Claim No. 13 in this case. U.S. Bank Trust, N.A. asserts in Proof of Claim No. 13 that it is the creditor holding the Class 1 secured claim in this case. No assignment of the underlying Debt or the claim from Ditech has been filed.

U.S. Bank Trust, N.A. in Proof of Claim No. 13, under penalty of perjury, fails to state any arrearage owed for the Class 1 Claim, electing to state under penalty of perjury that the information appropriate in response to the required information was "Notice Only for purpose of complying with 3002.1." Thus, it appears that there is admitted to be no arrearage on the claim secured by Debtor's residence.

On March 29, 2017, U.S. Bank Trust, N.A., as Trustee, filed a Notice of Post-Petition Fees, Expenses, and Charges stating that only a post-petition advance of $1,996.65 for property taxes and $397.69 for insurance were made by U.S. Bank Trust, N.A., as Trustee.

DECEMBER 12, 2017 HEARING

At the hearing, the court considered several options for how to proceed with the Modified Plan. Those options were discussed at the hearing, and the court continued the hearing to 3:00 p.m. on January 23, 2018. Dckt. 110.

The court further ordered that the Chapter 13 Trustee was to make regular post-petition monthly payments in the amount of $1,860.00 as provided in ¶ 2.09 for the Class 1 secured claim of U.S. Bank Trust, N.A., as Trustee. No disbursements for any arrearage were to be made, however, until further ordered by the court.

ORDER TO SHOW CAUSE AND ADMISSION OF NO PRE-PETITION ARREARAGE

The court issued an Order to Show Cause for U.S. Bank Trust, N.A., as Trustee, to show cause why the court should not interpret the information pleaded in Proof of Claim No. 13 under penalty of perjury as an admission that there is no pre-petition arrearage in this case. U.S. Bank Trust, N.A., as Trustee, did not respond to that Order, and the court has deemed that election not to respond as confirming that there is an admission that there in fact is no pre-petition arrearage.

At the hearing, **xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx**.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by Jay Cohen ("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.
>
> **IT IS ORDERED** that the Motion is **xxxxxxxxxxx**.

8. **17-25221-E-13** **TOMMIE RICHARDSON** **MOTION TO CONVERT CASE TO CHAPTER 7**
FF-1 **Peter Macaluso** **1-4-18 [44]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 4, 2018. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

The Motion to Convert 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 Convert the Chapter 13 Bankruptcy Case to a Case under Chapter 7 is denied.

This Motion to Convert the Chapter 13 bankruptcy case of Tommie Richardson, Jr. ("Debtor") has been filed by Seneca Leandro View LLC ("Movant"), a creditor. Movant asserts that the case should be dismissed or converted based on the following grounds:

A. Unreasonable delay,

B. Failure to timely file a plan, and

C. Denial of confirmation.

Movant contends that there was a trustee sale for real property commonly known as 1902 and 1904 Filbert Street, Oakland, California ("Property"), on July 17, 2017. Movant argues that it had a valid

sale contract with Debtor for the Property and that it had given Debtor $15,000.00 "to bring the loan current." Dckt. 44 at 2:14.5.

Instead of using the funds as designated by the sale contract, Movant argues that Debtor pocketed the money and did not inform Movant that there was a pending foreclosure sale. Movant argues that conversion is in the best interest of creditors under 11 U.S.C. § 1307(c)(1), (3), and (5) because Debtor filed this case without listing Movant as a creditor.

Additionally, Movant argues that Debtor does not qualify for Chapter 13 because Movant's unsecured claim by itself exceeds the debt limit established by Congress (*i.e.*, $394,725.00).

APPLICABLE LAW

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: "[f]irst, it must be determined that there is 'cause' to act[;] [s]econd, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

> [O]n request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause . . . .

11 U.S.C. § 1307(c). The court engages in a "totality of circumstances" test, weighing facts on a case-by-case basis and determining whether cause exists, and if so, whether conversion or dismissal is proper. *Drummond v. Welsh (In re Welsh)*, 711 F.3d 1120, 1123 (9th Cir. 2013) (citing *Leavitt v. Soto (In re Leavitt)*, 171 F.3d 1219 (9th Cir. 1999)). Bad faith is one of the enumerated "for cause" grounds under 11 U.S.C. § 1307. *Nady v. DeFrantz (In re DeFrantz)*, 454 B.R. 108, 112 n.4 (B.A.P. 9th Cir. 2011) (citing *In re Leavitt*, 171 F.3d at 1224).

DISCUSSION

Because this Motion was filed using the procedure under Local Bankruptcy Rule 9014-1(f)(2), Debtor was not required to file a written opposition. At the hearing, counsel for Debtor argued **xxxxxxxxxxxxxxxxxxx**

Debtor has filed a separate Objection to Movant's claim. *See* Dckt. 52. In short, that Objection argues that Movant's claim should not be allowed because it is unsupported by any evidence, including a copy of the sale contract that Movant argues in this Motion is the basis for its claim. While having Debtor's counsel argue that there should not be a claim, Debtor offers no testimony that there is not an obligation owning to Movant. Debtor puts no evidence at issue, but asserts only a legal argument over the "sufficiency" of the proof of claim.

A review of Movant's Proof of Claim (No. 7-1) discloses the following:

A. It is signed by Movant's counsel. While stated under "penalty of perjury," there is nothing to show that Movant's counsel has any personal knowledge of the underlying debt.

B. Creditor asserts a secured claim in the amount of $163,000.00. The collateral is asserted to be the funds held by the foreclosure trustee for the Filbert Street Property.

C. Creditor asserts an unsecured claim in the amount of $259,600.

D. The basis for the claim is stated to be: "Fraud in the inducement and Breach of Purchase Contract 1902-1904 Filbert St., Oakland CA and funds advanced."

Nothing else is provided by Movant in Proof of Claim No. 7-1.

Denial of Motion Without Prejudice

Here, Movant pounds the table as the "aggrieved" creditor, demanding that the case be converted to one under Chapter 7 to get the "bad guy" Debtor out of control in this case. However, for its proof of claim, Movant provides nothing more than its attorney stating that for some reason, based on some documents, Movant is somehow entitled to a $400,000+ claim in this case. Therefore, Movant is entitled to have Debtor booted.

The Declaration provided in support of the present Motion offers little credible testimony. Declaration, Dckt. 46. Alvin Cox, as the trustee of the Seneca Leandro View Trust, states he is the sole member of Seneca Leandro View, LLC, the Movant. He testifies that the basis for the claim being asserted by Movant is a "contract" between Debtor and Movant. Declaration ¶ 4, Dckt. 46. However, he does not provide any such "contract" to the extent that a written one exists. As discussed above, no "contract" is attached to Proof of Claim 7-1.

Further, Mr. Cox speculates, only being able to make the statement on "information and belief" that there was a foreclosure on the Filbert Street Property and a foreclosure trustee is holding $163,000.00 in proceeds from the sale. The court is unsure what legal basis there is for someone to testify under penalty of perjury in federal court based on speculative "information and belief." Federal Rule of Evidence 602 requires such a layperson witness to have personal knowledge of the facts to which he or she testifies. Mr. Cox admits that he has no such personal knowledge.

The declaration continues with Mr. Cox asserting "contentions" and "assertions," being careful not to actually provide any clear testimony under penalty of perjury based on his personal knowledge.

Movant has failed to provide evidence sufficient for the conversion of this case.

Though Debtor is prevailing on this Motion, the Objection to Claim is only slightly less worse in the presentation of legal rights and factual grounds than the present Motion. In large part, the Objection to Claim is little more than a "No you Don't" to Movant's "Yes we Do" contention as to whether there is

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

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

In re Holm, 931 F.2d at 623 (quoting 3 L. King, COLLIER ON BANKRUPTCY § 502.02, at 502-22 (15th ed. 1991)). The presumptive validity of the claim may be overcome by the objecting party only if it offers evidence of equally probative value in rebutting that offered by the proof of claim. *In re Holm* at 623; *In re Allegheny International, Inc.*, 954 F.2d 167, 173–74 (3d Cir. 1992). The burden then shifts back to the claimant to produce evidence meeting the objection and establishing the claim. *In re Knize*, 210 B.R. 773, 779 (Bankr. N.D. Ill. 1997).

Counsel for Debtor can consider whether the "no copy of contract" legal argument Objection as filed overcomes the prima facie validity of the claim filed by Movant's counsel for which no underlying documents are included with Proof of Claim No. 7-1.

As to converting the case under 11 U.S.C. § 1307(c)(1), (3), or (5), Movant's only argument for each is that this case was not filed in good faith because Debtor omitted listing Movant as a creditor. Failure to timely file a plan is not a valid ground in this case because a plan was filed timely at the beginning of the case. Denial of confirmation is not a valid ground because Debtor is seeking confirmation of an amended plan currently. As for unreasonable delay, Movant has not how conversion is in the better interest of all creditors, rather than having Debtor propose a plan that provides for Movant's claim.

Cause does not exist to convert this case pursuant to 11 U.S.C. § 1307(c). The Motion is denied without prejudice. The court has denied the present Motion without prejudice in light of Debtor's ephemeral Objection to Claim and lack of providing evidence countering Proof of Claim No. 7-1.

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 Convert the Chapter 13 case filed by Seneca Leandro View LLC ("a creditor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

9. 16-22331-E-13 LBG-101 | **ALVIN CATLIN** / **Lucas Garcia** | **MOTION TO MODIFY PLAN** / **11-20-17 [34]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 20, 2017. By the court's calculation, 64 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(g) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is denied.

Alvin Catlin, Jr., ("Debtor") seeks confirmation of the Modified Plan because his finances have changed after being diagnosed with cancer. Dckt. 36. The Modified Plan calls for payments of $4,250.00 from December 2017 through March 2018, with payments increasing to $5,800.00 in April 2018. Class 1 shall receive only ongoing mortgage payments due November 2017 to March 2018, and Classes 2, 5, and 7 shall be suspended from November 2017 through March 2018. 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 January 8, 2018. Dckt. 42. The Chapter 13 Trustee asserts that Debtor is $650.00 delinquent in plan payments, which represents less than one month of the plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor's plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). The Chapter 13 Trustee states that $47,324.68 has been reported in non-exempt equity, and the confirmed plan calls for a 100% dividend to unsecured claims. The Modified Plan, though, calls for paying a 40% dividend. Unsecured claims total $4,859.51 in this case.

Class 1 does not specify a dividend for pre-petition arrears, and the Additional Provisions do not fully address the payments. Specifically, the Additional Provisions do not state what the dividend will be in April 2018 after being suspended from November 2017 through March 2018.

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor has not filed supplemental schedules, and the current schedules indicate that Debtor has $5,035.80 in monthly net income. Debtor may not be able to increase plan payments in April 2018. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

CREDITOR'S CONDITIONAL OPPOSITION

2005 Residential Trust 3-1, its successors and/or assignees in interest ("Creditor") filed a Conditional Opposition on January 9, 2018. Dckt. 45. Creditor states that it does not oppose the Motion to the extent that it does not seek to modify Creditor's claim. The Amended Plan uses form language stating that Debtor is not in default, but that is not correct. According to Creditor, no payments have been made since the filing.

To the extent that the Amended Plan is an attempt to modify Creditor's claim or to deem the loan as current, Creditor opposes confirmation.

RULING

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 Alvin Catlin, Jr., ("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.

10. 14-28140-E-13 RLC-3 | **MAX SHOFFNER** **Stephen Reynolds** | **CONTINUED MOTION TO INCUR DEBT** **12-7-17 [46]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on December 7, 2017. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

The Motion to Incur Debt is denied.

Max Shoffner, Jr. ("Debtor") seeks permission to obtain financing to purchase real property, with a total amount of $375,000.00 and monthly payments of $2,500.00. FN.1.

FN.1. The moving party is reminded that the Local Rules require the use of a new Docket Control Number with each motion. LOCAL BANKR. R. 9014-1(c). Here, the moving party reused a Docket Control Number. That is not correct. The Court will consider the motion, but counsel is reminded that not complying with the Local Rules is cause, in and of itself, to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

Debtor has filed two Motions for Authority to obtain the financing, using the same Docket Control Number, RLC-003, for both. Dckts. 40, 46. The first motion was denied after the December 19, 2017 hearing. Civil Minutes, Dckts. 51, 52; Order, Dckt. 53. The denial was without prejudice.

APPLICABLE LAW

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).

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on December 27, 2017. Dckt. 54. The Chapter 13 Trustee opposes Debtor obtaining court approval without providing details about the specific purchase, relying on Federal Rule of Bankruptcy Procedure 4001(c)(1)(A) to require that a motion to obtain credit be accompanied by a copy of the credit agreement. A copy of the agreement for this Motion has not been provided.

The Chapter 13 Trustee also raises a procedural point about service. He notes that the Proof of Service indicates that he was served on December 7, 2017, but he was actually served on December 8, 2017. In this case, the one-day difference is still within the minimum service requirements for this district.

Finally, the Chapter 13 Trustee apologizes for filing the Opposition one day late, explaining that a combination of holiday vacations and vehicle trouble prevented the Opposition from being filed timely.

JANUARY 9, 2018 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on January 23, 2018, to allow Debtor to file and serve a declaration state more precise amounts regarding the credit agreement, as a well as a declaration from the co-maker. Dckt. 57.

SUPPORTING DECLARATION

Elizabeth Davis filed a Supporting Declaration for this Motion on January 16, 2018. Dckt. 58. Ms. Davis states that she lives with Debtor and has been pre-qualified along with Debtor to purchase property valued up to $375,000.00. Ms. Davis states that she will be a co-maker on the note and will be a co-owner for any purchased property.

Ms. Davis discloses that she has been making contributions to "joint household expenses" during this case, and she anticipates continuing to do so in an approximate amount of $398.13 per month.

DISCUSSION

At the December 19, 2017 hearing when the first Motion was presented, the court noted that this Amended Motion "does not appear to address all of the Chapter 13 Trustee's concerns about fully disclosing the information for this proposed financing." Dckt. 52 at 2. Despite that warning, Debtor has not fully disclosed the specific details for the credit agreement he seeks to have approved.

The Davis Declaration discloses that she and Debtor have been approved to purchase property worth up to $375,000.00, but that is the only information about the terms provided. Debtor has still not indicated what amount he intends to incur for purchasing property, and now, Debtor discloses that there is an additional party on this debt.

Debtor must fund the Chapter 13 Plan with monthly payments of $1,340.00. Order Approving Stipulated Modified Plan. Dckt. 39. Debtor has stated under penalty of perjury that his projected disposable income is only $1,347.92 per month after paying all of his *reasonable*, *necessary* expenses. Amended Schedules I and J, Dckt. 37. That is paying only $2,100 in rental expense.

Now, Debtor represents that he actually has an extra $400 per month, so he can make a monthly mortgage payment of $2,500.00. Additionally, Debtor will have enough money to ensure that property taxes and insurance (which appear to be in the $2,500 monthly payment), home maintenance, and repairs are made—all without missing a beat in making the $1,340.00 monthly plan payment.

Debtor now raises serious issues concerning the accuracy of the information provided under penalty of perjury on Schedules I and J. The court, the Chapter 13 Trustee, and parties in interest have relied upon those statements under penalty of perjury. Debtor now appears to be stating under penalty of perjury in his current declaration that the earlier financial information is not accurate.

Without reviewing details for the proposed debt, the court cannot determine that incurring additional debt is in the best interest of Debtor or of the Estate. Based on Debtor's prior financial information under penalty of perjury, he is financially unable to make the proposed $2,500.00 monthly payment.

Declaration of Elizabeth Davis Raises Additional Concerns

Elizabeth Davis come forward and testifies under penalty of perjury that she lives with Debtor. Declaration, p. 1:22.5; Dckt. 58. Ms. Davis testifies that during this case she has made "monetary contributions" to their "joint household expenses." *Id.*, ¶ 2.

The court confirmed the Original Plan in this case (Dckt. 5) providing for only $750.00 per month payments and a 0.00% dividend to creditors holding general unsecured claims based upon the financial information provided under penalty of perjury by Debtor. On Schedule I, Debtor stated under penalty of perjury that his monthly income, after all withholding and deductions, was $4,161.26. Dckt. 1 at 21. No income from Ms. Davis as contribution for her half (or any portion) of their living expenses is shown on Schedule I. On Schedule J, Debtor states that his roommate pays only the monthly utilities, telephone,

and internet—which the roommate presumably uses half the time. Debtor states he pays $1,758.00 for the rent/mortgage, he pays $100.00 for home maintenance, and he pays $600 for transportation. *Id.* at 23.

On May 14, 2016, Debtor amended Schedule J to increase his food and housekeeping supplies to $750.00 per month, as well as his transportation expense to $750.00 per month. Dckt. 29 at 7. Those amounts appear to be more consistent with paying the expenses for two adults per month, not one.

In August 2017, Debtor again amended Schedules I and J. On Second Amended Schedule I, Debtor's monthly income, after withholding and deductions, grows to $6,492.92 (with his receiving pension or retirement income in addition to $7,200 per month in gross wages. Dckt. 37 at 4. Debtor did modify the plan to increase the plan payments to provide for a 60% dividend to creditors holding general unsecured claims, but not by the amount of increased monthly income. For Second Amended J, Debtor's monthly expenses appear to be even more for two persons—(1) food and housekeeping expenses of $750; (2) clothing of $275.00 per month; (3) personal care products and services of $100.00 per month, (4) transportation of $400 per month; and (5) entertainment of $250.00 per month.

It appears that what Debtor has perpetrated in this case is to divert money to the benefit of Debtor's co-habitation partner at the cost of creditors. If Ms. Davis were paying her fair share of expenses, then there should not be such "extra" money available for this post-petition creditor to become a property owner.

Rather than showing a good faith basis for Debtor seeking authorization for such financing, that Declaration provides evidence that this request, and quiet possibly this case, has not been prosecuted in good faith.

Denial of Motion

The Motion is denied. The denial is final, and Debtor shall not continue to file further motions seeking the relief denied in for this Motion.

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 Max Shoffner, Jr. ("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.

11. **16-24246-E-13** **RICHARD CRUZ** **CONTINUED MOTION TO CONFIRM PLAN**
EWV-140 **Eric Vandermey** **10-22-17 [157]**

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

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

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on October 22, 2017. By the court's calculation, 44 days' notice was provided. 42 days' notice is required. FED. R. BANKR. P. 2002(b); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied.

Richard Cruz ("Debtor") seeks confirmation of the Amended Plan because he has removed income and expenses for his non-filing spouse. Dckt. 159. The Amended Plan proposes plan payments of $1,260.00 for sixty months with a 0.00% dividend to unsecured claims. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on November 17, 2017. Dckt. 165. The Chapter 13 Trustee asserts that Debtor is $485.00 delinquent in plan payments, which represents less than one month of the $1,260.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

The Chapter 13 Trustee alleges that the Plan violates 11 U.S.C. § 1325(b)(1), which provides:

> If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or the plan provides that all of the debtor's projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan.

The Plan proposes to pay a zero percent dividend to unsecured claims, which total $183,852.00, though Debtor's projected disposable income under 11 U.S.C. § 1325(b)(2) totals $5,801.53. Thus, the court may not approve the Plan.

The Chapter 13 Trustee also raises a concern that this plan may not have been filed in good faith. 11 U.S.C. § 1325(a)(3). He notes that there is a motion not set for hearing for a boat and that the transaction has been misrepresented as an arms' length transaction. He also notes that Debtor has omitted S-Corp income and has failed to provide numerous documents regarding dissolution, spousal support, and taxes.

Concerning the S Corp, Debtor does not list an income from said corporation, but only a monthly salary of $9,000.

DECEMBER 5, 2017 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on January 23, 2018, and ordered that any proposed amendments and supplemental pleadings be filed by December 23, 2017. Dckts. 168, 169.

DEBTOR'S SUPPLEMENTAL PLEADING

Debtor filed a Supplemental Pleading on December 23, 2017. Dckt. 171. Debtor argues that he is now current on plan payments and that he has provided corporate and personal tax returns for the 2016 tax year.

Debtor moves within his pleading for the court to grant his request to sell a boat "to the only potential buyer that has surfaced." *Id.* at 2:5–6. Debtor wishes to sell the boat for $25,000.00 to Ismael Resendeiz to pay of the lien against the boat and to contribute any remaining proceeds into the Plan.

As to his income, Debtor states that he earns gross salary of $9,000.00 per month from the S-Corporation he owns partially, and he claims that the salary is the only source of income he has from the business. He states that he does not receive any dividend. From gross income, Debtor states that he spends $2,150.00 in payroll deductions and $5,590.00 in living expenses, leaving $1,260.00 for plan payments.

Debtor also states that he is going through a divorce proceeding, but he has not finalized it and does not have paperwork to show that the marriage has been dissolved. He states that he is separated from his estranged spouse, which resulted in him paying $1,500.00 per month in spousal support and $135.00 per month for insurance on the ex-spouse's vehicles.

CHAPTER 13 TRUSTEE'S REPLY

The Chapter 13 Trustee filed a Reply on January 5, 2018. Dckt. 174. He agrees that Debtor is no longer delinquent. He does not believe that Debtor has addressed problems with the means test, however.

Regarding the corporate income, the Chapter 13 Trustee still has trouble believing that it is Debtor's only income. His concern is that Debtor lists the corporate income on his personal income tax return on Schedule E, entitled "Supplemental Income and Loss." Debtor is taxed on that income, which is under his control. While Debtor argues that it represents a necessary expense for the business, the Chapter13 Trustee is not convinced that Debtor has provided evidence why it is necessary. The records provided to the Chapter 13 Trustee show that the corporation has retained earnings of at least $3,817.00 per month, but he is not sure why Debtor needs the corporation to retain that amount.

The Chapter 13 Trustee is not sure what amount should be scheduled for spousal support without more evidence. Records provided to him show transfers in August, September, and October 2017 of $1,635.00, in line with Debtor's statements. Transfers in May, June, and July 2017 are for $2,625.00, however.

For the sale of the boat, Debtor has not addressed any post-petition tax expense, and he has not addressed the status of other properties to be surrendered including, 1263 Alice Street, Woodland, California, and a camping trailer.

The Chapter 13 Trustee continues to question whether the plan is being prosecuted in good faith because Debtor has continued to fail to set a motion to approve sale for hearing.

RULING

Despite Debtor's attempt to correct the problems raised for his prosecution of this plan, there remain problems. Among them are potentially conflicting amounts for spousal support, lack of clarity about expenses to be paid from a boat sale, income questions because of how Debtor filed his tax returns, and lack of following procedure because there is no motion before the court to approve a boat sale proposed in the Plan.

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 Richard Cruz ("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.

12.	**17-27346-E-13** **SS-2**	**KENNETH TABOR** **Scott Shumaker**	**MOTION TO IMPOSE AUTOMATIC STAY** **11-21-17 [13]**

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the 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, Chapter 13 Trustee, creditors, and Office of the United States Trustee on November 20, 2017. By the court's calculation, 64 days' notice was provided. 14 days' notice is required.

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

The Motion to Impose the Automatic Stay is denied.

Kenneth Tabor ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) imposed in this case. This is Debtor's third bankruptcy petition pending in the past year with the prior two cases having been dismissed. Debtor's prior bankruptcy cases (Nos. 16-21854 and 16-27948) were dismissed on September 7, 2017, and December 19, 2016, respectively. *See* Order, Bankr. E.D. Cal. No. 16-21854, Dckt. 149, September 7, 2017; Order, Bankr. E.D. Cal. No. 16-27948, Dckt. 11, December 19, 2016. Therefore, pursuant to 11 U.S.C. § 362(c)(4)(A)(i), the provisions of the automatic stay did not go into effect upon Debtor filing the instant case.

Here, Debtor states that the instant case was filed in good faith and explains that the previous cases were dismissed because his finances were hindered by medical expenses that he fronted for his girlfriend.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on November 28, 2017. Dckt. 19. The Chapter 13 Trustee states that he is unable to determine if there has been a change in Debtor's circumstances or if this case was filed in good faith. He notes that this case was filed with a skeleton petition. He also notes that there has been a sale of property disclosed in Debtor's declaration that did not receive court approval, including Debtor filing an estimate closing statement. That sale will result in Debtor receiving approximately $230,096.43.

INTERIM ORDER IMPOSING THE AUTOMATIC STAY

On December 6, 2017, the court entered an interim order imposing the automatic stay in this case through noon on January 31, 2018. Dckt. 34. Additionally, the court set this matter for final hearing at 3:00 p.m. on January 23, 2018. *Id.* The court ordered Debtor to file supplemental pleadings (in addition to the original pleadings on any party not served previously) by December 22, 2017.

DEBTOR'S SUPPLEMENTAL DECLARATION

Debtor filed a Supplemental Declaration on December 22, 2017. Dckt. 46. Debtor reports that the pending sale for real property he owns in Granite Bay face unforeseen issues and has dropped from $255,200.00 to below $200,000.00, although Debtor does not disclose how far below.

Debtor states he now will not be able to fund a plan from the sale of his property; so, he has elected to keep the house and repay the debt on it through a plan. Debtor states that he obtained full-time employment since filing this bankruptcy case, which will allow him to fund a plan without having to rely upon a sale of property.

Nevertheless, Debtor states that he is open to selling the Granite Bay property in the future.

DISCUSSION

Upon motion of a party in interest and after notice and hearing, the court may order the provisions imposed if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(4)(B). The subsequently filed case is presumed to be filed in bad faith if two or more of Debtor's cases were both pending within the year preceding filing of the instant case. *Id.* § 362(c)(4)(D)(i)(I). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* § 362(c)(4)(D).

Debtor's prior cases were dismissed after Debtor failed to make plan payments (No. 16-21854) and after Debtor failed to timely file documents (No. 16-27948).

Debtor's Supplemental Declaration indicates the problems with imposing the automatic stay for this bankruptcy case. While Debtor had presented to the court previously that a plan in this case would be funded through the proceeds from a property sale, Debtor has now about-faced to keep the property and use employment wages to pay for a plan. That scenario is not problematic on its own, but what is problematic is that Debtor in his Supplemental Declaration does not want to reveal information to the court.

Instead of being forthcoming, Debtor chose not to withhold just how far the sale price had fallen, what caused the price to fall, what employment Debtor obtained, what his income is from new employment, and what problems Debtor faced with his property that he can correct before trying to sell it again.

Additionally, Debtor has not proposed an amended plan and has not filed Supplemental Schedules I and J showing his accurate post-petition income and expenses.

Debtor has two pieces of real property—his residence in Yuba City that he states is worth $350,000 and the Granite Bay Property that Debtor now knows is worth less than $200,000. Schedule A/B, Dckt. 23 at 3–4. Debtor claims his homestead exemption in the Yuba City residence. Schedule C, *Id.* at 11. Debtor states on Schedule D that the Yuba City is subject to a deed of trust to secure a claim of $99,000.00 and no other creditors have secured claims. *Id.* at 13.

Looking at Schedule J, no expenses are provided for property taxes and insurance for either the Yuba City or Granite Bay properties. *Id.* at 19–20. While the Yuba City property taxes and insurance may be included in the monthly mortgage payment, there is no stated debt for a mortgage payment for the Granite Bay property.

On the Statement of Financial Affairs, Debtor states that he had rental income of $5,500 in 2015, $12,500 in 2016, and $12,500.00 in 2017. No expenses are shown on Schedule J. On Schedule I, Debtor states that he actually has $2,750.00 per month ($33,000 annually) in *net* rental or business income. Dckt. 24 at 18. On his Business Income and Expenses statement, *Id.* at 37, Debtor states having gross monthly income of $2,000 from his business, from which the following expenses are paid: $500.00 for inventory. Debtor does not list any expenses for self-employment or income taxes (with none listed on Schedule I or J), insurance, accounting, or other normal self-employed business expenses.

Debtor has not sufficiently rebutted the presumption of bad faith under the facts of this case and the prior cases for the court to impose the automatic stay.

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 to Impose the Automatic Stay filed by Kenneth Tabor ("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.

13.	**17-27346-E-13** **SS-3**	**KENNETH TABOR** **Scott Shumaker**	**AMENDED MOTION TO CONFIRM PLAN** **12-11-17 [37]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on December 11, 2017. By the court's calculation, 43 days' notice was provided. 42 days' notice is required. FED. R. BANKR. P. 2002(b); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied.

Kenneth Tabor ("Debtor") seeks confirmation of the Amended Plan because he can now afford to make monthly plan payments as well as his bills. Dckt. 38 at 2:15–17. The Amended Plan proposes monthly payments of $3,190.00 for forty months with a 100% dividend to general unsecured claims. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on January 9, 2018. Dckt. 55. The Chapter 13 Trustee argues that the Amended Plan is based upon a plan form that is no longer effective now that the court has adopted a new plan form as of December 1, 2017. The Amended Plan is based on a prior plan form, which is a violation of Federal Rule of Bankruptcy Procedure 3015-1 and General Order 17-03.

Debtor has not provided the Chapter 13 Trustee with employer payment advices for the sixty-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv). 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).

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

A. Two years of tax returns, and
B. A written description of assets, or written statement that no such documentation exists.

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

Finally, the Chapter 13 Trustee notes that the first Meeting of Creditors was held on January 4, 2018, and continued to February 1, 2018. The Chapter 13 Trustee did not receive all of Debtor's business documents and tax returns in time to review them prior to the hearing. Debtor has not yet been fully examined.

The Chapter 13 Trustee requests that the hearing on the Objection be continued to 3:00 p.m. on February 27, 2018.

CREDITOR'S OPPOSITION

US Bank Trust, N.A., as Trustee of the Bungalow Series F Trust ("Creditor") filed an Opposition on January 9, 2018. Dckt. 58. Creditor argues that Debtor's Plan was not filed in good faith and is an improper modification of a claim secured only by a security interest in real property that is Debtor's principal residence. Creditor asserts a secured claim against the property commonly known as 10161 Major Road, Yuba City,, California. Creditor asserts that Debtor is not the borrower on the property. 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.

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 $55,151.23 in pre-petition arrearages. The Plan does not propose to cure those arrearages. 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 arrearages.

RULING

Despite the Chapter 13 Trustee requesting that the matter be continued, there appear to be significant problems with the Amended Plan regarding how it modifies a debt secured by Debtor's principal residence and regarding the amount of plan payments needed to satisfy Creditor's arrears. Debtor has not responded with any proposed amendments to resolve the problems with the current plan, and cause exists to deny confirmation.

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 Kenneth Tabor ("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.

14. 17-27449-E-13 DL-1 | **BONITA MELENDEZ** / **Rick Morin** | **OBJECTION TO CONFIRMATION OF PLAN BY SACRAMENTO MUNICIPAL UTILITY DISTRICT** / **12-21-17 [18]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on December 21, 2017. By the court's calculation, 33 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

Sacramento Municipal Utility District ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

A. The Plan fails to cure the arrears owed on Creditor's claim, and

B. The Plan proposes to modify Creditor's claim that is secured only by a security interest in real property that is Debtor's principal residence.

CHAPTER 7 TRUSTEE'S NOTICE OF RELATED CASE

Kimberly Husted ("the Chapter 7 Trustee") filed a Notice of Related Case on January 8, 2018. Dckt. 28. The Chapter 7 Trustee informs the court that Case No. 14-28030 was re-opened on October 13,

2017, to administer the Estate's interest in a personal injury lawsuit that was undisclosed in Debtor's Chapter 7 case.

RULING

Creditor's objections are well-taken. 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 $4,951.50 in pre-petition arrearages. The Plan does not propose to cure those arrearages. 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 arrearages.

Creditor argues that Debtor's Plan was not filed in good faith and is an improper modification of a claim secured only by a security interest in real property that is Debtor's principal residence. Creditor has filed a Proof of Claim indicating a secured claim in the amount of $4,951.50, secured by real property commonly known as 8158 Visalia Way, Sacramento, 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.

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 Sacramento Municipal Utility District ("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.

15. **17-27250-E-13** **VIKTOR KRIVOSHEY** **OBJECTION TO CONFIRMATION OF**
DPC-1 **Pro Se** **PLAN BY DAVID P. CUSICK**
12-21-17 [33]

Final Ruling: No appearance at the January 23, 2018 hearing is required.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Confirmation having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is overruled as moot, the case having been dismissed.

16. 17-26156-E-13 DJC-1 | **THOMAS FOX** **Diana Cavanaugh** | **MOTION TO VALUE COLLATERAL OF WHEELS FINANCIAL GROUP, LLC 12-20-17 [23]**

Final Ruling: No appearance at the January 23, 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 December 20, 2017. By the court's calculation, 34 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 Wheels Financial Group, LLC dba 1-800LoanMart ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $12,239.00.

The Motion filed by Thomas Fox, Jr. ("Debtor") to value the secured claim of Wheels Financial Group, LLC dba 1-800Loan Mart ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2008 Ford Mustang GT ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $12,239.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on January 8, 2018. Dckt. 27. The Chapter 13 Trustee notes that Schedule D shows Santander Consumer USA, Inc., as having a claim secured by the Vehicle in the amount of $21,003.31.

He also notes that no information about the Vehicle's style, condition, options, or needed repairs is provided to justify the valuation, but Creditor filed Proof of Claim 3-1 for $20,907.58, claiming $13,055.00 as secured and as the Vehicle's value.

RULING

Creditor's Proof of Claim includes an attached Kelley Blue Book Valuation Report showing a value of $13,055.00 for a 2008 Ford Mustang GT Premium Coupe 2D with 71,000 miles. Debtor's Declaration states that there are 71,000 miles on the Vehicle, but Debtor has not provided any evidence of the Vehicle's value other than his testimony. Creditor has not opposed this Motion, however.

The lien on the Vehicle's title secures a non purchase-money loan incurred on March 18, 2015, to secure a debt owed to Creditor with a balance of approximately $20,907.58. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of $12,239.00, the value of the collateral as presented by Debtor. *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 Thomas Fox, Jr. ("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 Wheels Financial Group, LLC dba 1-800LoanMart ("Creditor") secured by an asset described as a 2008 Ford Mustang GT ("Vehicle") is determined to be a secured claim in the amount of $12,239.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $12,239.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

17. 14-29659-E-13 DPC-3 | **JUAN ZARAGOZA-BRAVO** | **Mary Ellen Terranella** | **OBJECTION TO CLAIM OF FINANCIAL ASSISTANCE, INC., CLAIM NUMBER 3** | **12-1-17 [67]**

Final Ruling: No appearance at the January 23, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Debtor, Debtor's Attorney, and Office of the United States Trustee on December 1, 2017. By the court's calculation, 53 days' notice was provided. 30 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

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

The Objection to Proof of Claim Number 3 of Financial Assistance, Inc. is sustained, and the claim is disallowed in its entirety.

David Cusick, the Chapter 13 Trustee, ("Objector") requests that the court disallow the claim of Financial Assistance, Inc. ("Creditor"), Proof of Claim No. 3 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $23,195.92. Objector asserts that the Claim has not been timely filed. *See* FED. R. BANKR. P. 3002(c). The deadline for filing proofs of claim in this case was January 28, 2015. Notice of Bankruptcy Filing and Deadlines, Dckt. 9.

DISCUSSION

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

v. Holm (In re Holm), 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

The deadline for filing a proof of claim in this matter was January 28, 2015. Creditor's Proof of Claim was filed on June 16, 2016. No order granting relief for an untimely-filed proof of claim for Creditor has been issued by the court.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Financial Assistance, Inc. ("Creditor") filed in this case by David Cusick ("the Chapter 13 Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Proof of Claim Number 3 of Financial Assistance, Inc. is sustained, and the claim is disallowed in its entirety.

18. **17-26960-E-13** **ALFREDO OROZCO** **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK**
DPC-1 **Thomas Gillis** **12-19-17 [17]**

Final Ruling: No appearance at the January 23, 2018 hearing is required.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Confirmation having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is overruled as moot, the case having been dismissed.

19.	**17-28263-E-13 CYB-1**	**KENNETH BONNAFON AND NORMA SALINAS-BONNAFON Candace Brooks**	**MOTION TO VALUE COLLATERAL OF ARIZONA CENTRAL CREDIT UNION 1-5-18 [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 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, and Office of the United States Trustee on January 5, 2018. By the court's calculation, 18 days' notice was provided. 14 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of Arizona Central Credit Union ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $11,250.00.

The Motion filed by Kenneth Bonnafon and Norma Salinas-Bonnafon ("Debtor") to value the secured claim of Arizona Central Credit Union ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2013 Toyota Camry XE ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $11,250.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on January 9, 2018. Dckt. 20. The Chapter 13 Trustee notes that two different values for the Vehicle are asserted in this Motion, the Plan, and

the Schedules. The Motion and Schedules assert a value of $11,250.00, and the Plan presents a value of $13,200.00. He notes that Creditor has not filed a proof of claim.

RULING

The lien on the Vehicle's title secures a non purchase-money loan incurred on October 29, 2016, which is more than one year prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $16,684.00. 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 $11,250.00, 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 Kenneth Bonnafon and Norma Salinas-Bonnafon ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Arizona Central Credit Union ("Creditor") secured by an asset described as a 2013 Toyota Camry XE ("Vehicle") is determined to be a secured claim in the amount of $11,250.00, 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 $11,250.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

20. **17-26467-E-13** **TARYN WESGATE** **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK**
DPC-1 **John Maxey** **11-14-17 [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, 2017. 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.

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

A. Taryn Wesgate ("Debtor") cannot comply with the Plan, and

B. The Plan fails the liquidation analysis.

DEBTOR'S RESPONSE

Debtor filed a Response on December 6, 2017. Dckt. 27. Debtor promises to address the grounds raised by the Chapter 13 Trustee by proposing an amended plan.

DECEMBER 12, 2017 HEARING

At the hearing, counsel reported that this was an emergency filing made on the day of a scheduled Internal Revenue Service lien sale.

The court continued the hearing to 3:00 p.m. on January 23, 2018. Dckt. 28.

RULING

Unfortunately for Debtor, an amended plan and motion to confirm have not been filed.

The Chapter 13 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 admitted at the first Meeting of Creditors that she does not receive any spousal support from her estranged spouse, and she has been unemployed since 2006. The expenses listed on Schedule J are below the Internal Revenue Service's ("IRS") national standards, and Debtor failed to disclose a foreclosure attempt by the IRS. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

The Chapter 13 Trustee also raises issues with the proposed plan. The proposed plan payment is $0.00. The plan duration is zero months. Attorney fees of $3,000.00 are listed to be paid through the Plan even though there is no plan payment. Section 2.15 states unclearly:

"***Creditor unsecured gen claim est percent paid NU***%."

No box is checked to indicate whether there are additional provisions. A claim for the IRS was listed without any interest rate or monthly dividend.

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor's plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). He states that Debtor has non-exempt equity of at least $314,700.00 and that she has not disclosed all of her assets. The Plan does not propose a dividend to unsecured claims despite there being non-exempt equity in Debtor's assets. FN.1.

FN.1. This is a very concerning contention by the Chapter 13 Trustee. If Debtor has such large non-exempt equity and is unable to prosecute a plan to pay creditors, it may fall to an independent fiduciary to liquidate the property of the estate and pay creditors' claims.

Taken at face value, Debtor's statements under penalty of perjury in the schedules include:

A. Debtor has an interest in real property, which interest has a value of $343,000.00.

B. Debtor owns no vehicles.

C. Debtor owns no jewelry.

D. Debtor has no cash.

E. Debtor has no checking, saving, or other accounts at any financial institutions.

F. Debtor has no stock, investment, or retirement accounts. Debtor has no pension.

G. Debtor states she has a nonspecific "beneficiary interest" with a value of $0.00. In an attachment to Schedule A/B, Debtor states:

> "Attachment 1: Real Property
>
> Property is held in The Lorraine M. Harris 2002 Family Trust. Debtor is the sole beneficiary of the property. The IRS has a tax lien recorded against the property for 1040 income taxes owed by Lorraine M. Harris Family Trust. Debtor is in the process of getting the trustees of the trust to pay the tax bill."

Schedule A/B, Dckt. 1.

Debtor claims no Exemptions on Schedule C. *Id.* at 12–13. On Schedule I, Debtor states she is not employed and has $0.00 in income. *Id.* at 24. On the Statement of Financial Affairs, Debtor states she is married. *Id.* at 29, Question 1. No income is listed for a spouse on Schedule I. Surprisingly, in an attachment to the Statement of Financial Affairs, Debtor states:

> "Attachment 1
>
> Debtor has no interest in this business although spouse filed tax return naming her as proprietor. Business is owned and operated by non-filing spouse and daughter. Spouse filed joint tax returns, however, no income was derived by Debtor"

Id. at 41. Debtor affirmatively states that neither she nor her non-debtor spouse have any income.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by David Cusick ("the Chapter 13 Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

21.	**17-26467-E-13** **DPC-2**	**TARYN WESGATE** **John Maxey**	**OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS** **11-14-17 [23]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on November 14, 2017. By the court's calculation, 70 days' notice was provided. 28 days' notice is required.

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

The Objection to Claimed Exemptions is overruled without prejudice.

David Cusick ("the Chapter 13 Trustee") objects to Taryn Wesgate's ("Debtor") "exemptions" because Debtor has not claimed any exemptions. Objection, Dckt. 23 at 2:1–2. The Chapter 13 Trustee requests that the court "disallow" exemptions that have not been claimed by Debtor.

The Chapter 13 Trustee is correct; Debtor has not claimed any exemptions on Schedule C. Dckt. 11 at 12.

There being no exemptions claimed, there is no claim or controversy for this court to decide. Before a federal court exercises its jurisdiction over parties, it must determine that there is a sufficient "case" or "controversy" as required by the United States Constitution, Article III, Section 2, Clause 1. No basis is shown for the court to issue a "declaratory order" stating that "no exemption has been claimed on Schedule C, so no exemption has been claimed on Schedule C." FN.1.

FN.1. In reality, it may be that the Chapter 13 Trustee was using this motion as a case management device to focus Debtor on these issues and provide a forum for counsel for the Chapter 13 Trustee and counsel for Debtor to address with the court any special challenges in this case.

The Objection is overruled without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claimed Exemptions filed by David Cusick ("the Chapter 13 Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection is overruled without prejudice.

22. **17-26467-E-13** **TARYN WESGATE** **MOTION TO DISMISS CASE**
DPC-2 **John Maxey** **1-3-18 [31]**

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

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. FN.1.

FN.1. The moving party is reminded that the Local Rules require the use of a new Docket Control Number with each motion. LOCAL BANKR. R. 9014-1(c). Here, the moving party reused a Docket Control Number. That is not correct. The Court will consider the motion, but counsel is reminded that not complying with the Local Rules is cause, in and of itself, to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 3, 2018. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

The Motion to Dismiss 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 Dismiss is granted, and the case is dismissed.

David Cusick ("the Chapter 13 Trustee") moves to dismiss Taryn Wesgate's ("Debtor") case on the grounds that Debtor is ineligible under 11 U.S.C. § 109(e) and that she is causing unreasonable delay because her Plan fails the liquidation analysis, it misses necessary terms, Debtor did not disclose her interest in two trusts, and Debtor did not disclosure a pending Internal Revenue Service lien sale.

Debtor appears to agree that dismissal of this case is warranted, because Debtor has moved for this case to be dismissed voluntarily. *See* Dckt. 35.

Cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss the Chapter 13 case filed by David Cusick ("the Chapter 13 Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Dismiss is granted, and the case is dismissed.

23. 17-27271-E-13 PPR-1 | **ELIAS BONILLA** / **John Sargetis** | **OBJECTION TO CONFIRMATION OF PLAN BY HSBC BANK USA, N.A. 12-15-17 [20]**

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 December 15, 2017. By the court's calculation, 39 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.

HSBC Bank USA, National Association as Trustee for GSAA Home Equity Trust 2005-9, Asset-Backed Certificates, Series 2005-9, its assignees and/or successors in interest ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

A. The Plan does not cure the pre-petition arrears owed on its claim;

B. The Plan proposes unequal payments through increased plan payments after three months; and

C. The Plan was not filed in good faith because it attempts to avoid most of the arrears owed to Creditor.

Part of Creditor's objections are well-taken. The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has not filed a timely proof of claim, but Creditor asserts that the arrears owed on its claim are $129,673.59, not the $14,780.00 provided for in the Plan. The Plan does not propose to cure that 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 arrearages.

11 U.S.C. § 1325(a)(5)(B)(iii)(I) requires that the Plan provide equal monthly payments with respect to each secured claim provided for in the Plan. Creditor believes that increasing plan payments from $323.00 after three months to $1,100.00 per month is an unequal payment.

To consider the nuance of that argument, the court begins with a review of the Plan payment terms and where those payments are to be disbursed. The Plan requires a monthly plan payment from the Debtor of $3,198.00 for sixty months. Plan ¶ 1.01, Dckt. 13. With respect to Creditor's claim, the Plan first provides for making the current monthly mortgage payment of $1,785.00 beginning with the first month. Plan ¶ 2.08(c), *Id.* Curing of the pre-petition arrearage is addressed in the Additional Provisions of the Plan (discussed below).

Then, Debtor's priority, nondischargeable tax claims listed in the Plan are stated to be $52,300.00, beginning with the first month of the Plan (averaging $871.66 per month). Plan ¶ 2.13. No other creditors are to be paid through the Plan.

The Plan further provides for payment of the Chapter 13 Trustee's fees and payment of $2,560.00 in fees for Debtor's counsel (Plan ¶ 2.06).

In the Additional Provisions, the Plan provides for making a creditor arrearage payment of only $323.00 for months 1–3, and then increasing it to $1,100.00 for months 4–16 (or until paid in full). Plan, Additional Provisions, *Id.* at 2. It appears that the reduced payments for the first three months of the anticipated sixteen months of the Plan appear to be to allow for the payment of Debtor's counsel's administrative expenses. The court's calculation of this proposition is as follows:

Monthly Plan Payment	$3,198.00	
Estimated Chapter 13 Trustee Fees at 8%	($255.00)	
Current Monthly Mortgage Payment	($1,785.00)	
Estimated Class 5 Priority Tax Payment ($52,300/60)	($872.00)	
Plan Funds Remaining for Attorney's Fees and Cure of Arrearage	$286.00	

As written, the Plan requires the stated $14,280.00 arrearage, which if amortized over sixty months would require a $238.00 monthly payment. That leaves $46 per month for counsel fees, which would be adequate if the payment of those fees were also amortized over sixty months.

However, taking Creditor's computation of the arrearage now stated in Proof of Claim No. 1 (Filed January 18, 2018) of $131,730.08 as accurate, amortizing that over sixty months requires a monthly cure payment of $2,195.50. The Plan as now presented to the court does not adequately provide for that. FN.1.

FN.1. If Debtor's original computation of there being only a $14,780.00 arrearage were accurate, then that could have been amortized over sixty months of $246.33 per month rather than the accelerated sixteen months provided in the Plan. Unfortunately, it appears that Debtor will be unable to grant Creditor's request to decelerate its cure payment to provide for equal payments over sixty months.

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 as Trustee for GSAA Home Equity Trust 2005-9, Asset-Backed Certificates, Series 2005-9, its assignees and/or successors in interest ("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.

24.	**17-25975-E-13** **DPC-2**	**PHILIP ROBERTS** **Peter Macaluso**	**CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **10-18-17 [19]**

Final Ruling: No appearance at the January 23, 2018 hearing is required.

David Cusick ("the Chapter 13 Trustee") having filed a Supplemental Ex Parte Motion to Dismiss Trustee's Objection, pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Objection to Confirmation was dismissed without prejudice, the matter is removed from the calendar, and the Chapter 13 Plan filed on September 8, 2017, is confirmed.**

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

25. 17-28075-E-13 DEF-1 | **GEORGE/KATHLEEN COPE** **David Foyil** | **MOTION TO VALUE COLLATERAL OF CAPITAL ONE AUTO FINANCE** **12-21-17 [13]**

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

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 and Creditor on December 21, 2017. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of Capital One Auto Finance ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $6,065.00.

The Motion filed by George Cope and Kathleen Cope ("Debtor") to value the secured claim of Capital One Auto Finance ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2011 Kia Soul ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $6,065.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on January 8, 2018. Dckt. 25. The Chapter 13 Trustee notes that there is no information about the style, condition, options, or needed repairs for the Vehicle. He notes, however, that Creditor filed Proof of Claim 1-1 in the amount of $8,205.05, with $7,425.00 listed as secured and as the Vehicle's value.

DEBTOR'S SUPPLEMENTAL DECLARATION

Debtor filed a Supplemental Declaration on January 16, 2018. Dckt. 28. Debtor states that the Vehicle had 49,462 miles as of the petition date, that it is a four-door vehicle with a four-cylinder engine, automatic transmission, and two-wheel drive. Debtor states that only minor paint touch-ups are needed. Debtor reasserts that $8,537.00 is due to Creditor, despite Creditor's Proof of Claim being for a lower amount.

RULING

Creditor's Proof of Claim does not include a valuation report, and Creditor has not opposed the Motion.

The lien on the Vehicle's title secures a purchase-money loan incurred on November 1, 2014, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $8,205.05. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of $6,065.00, 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 George Cope and Kathleen Cope ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Capital One Auto Finance ("Creditor") secured by an asset described as a 2011 Kia Soul ("Vehicle") is determined to be a secured claim in the amount of $6,065.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $6,065.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

26. **17-27377-E-13** **MELISSA SMITH** **OBJECTION TO CONFIRMATION OF**
DPC-1 **Aubrey Jacobsen** **PLAN BY DAVID P. CUSICK**
12-21-17 [37]

Final Ruling: No appearance at the January 23, 2018 hearing is required.

Local Rule 9014-1(f)(2) Objection.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on December 21, 2017. 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.

The Objection to Confirmation is overruled as moot.

David Cusick ("the Chapter 13 Trustee") objects to confirmation of Melissa Smith's ("Debtor") Chapter 13 plan. The court converted Debtor's case on January 17, 2018, however, converting the case to a proceeding under Chapter 7. With the case converted to Chapter 7, the proposed Chapter 13 plan is now moot. 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 filed by David Cusick ("the Chapter 13 Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is overruled as moot.

27. **17-27883-E-13** **DENISE ASHLEY** **MOTION TO VALUE COLLATERAL OF KIA**
TAG-1 **Aubrey Jacobsen** **12-15-17 [13]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditor, and Office of the United States Trustee on December 15, 2017. By the court's calculation, 39 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of Kia Motors Finance ("Creditor") is set for an evidentiary hearing at 9:30 a.m. on xxxxx, 2018.

The Motion filed by Denise Ashley ("Debtor") to value the secured claim of Kia ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2015 Kia Soul ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $11,707.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

CREDITOR'S OPPOSITION

Creditor (identified fully as Kia Motors Finance) filed an Opposition on January 2, 2018. Dckt. 29. Creditor references a NADA Valuation Report showing a value of $15,925.00 for the Vehicle. Creditor opposes Debtor's valuation, arguing that Debtor has not explained why the valuation is so much lower than listed in the NADA Valuation Report.

Creditor argues for three alternative grounds: denial of the Motion, amendment of the Motion to assert a value of $15,925.00, or an evidentiary hearing set on or after March 1, 2018.

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on January 8, 2018. Dckt. 34. The Chapter 13 Trustee notes that Debtor has not provided information about the style, condition, options, or needed repairs for the Vehicle. He notes that Schedules A/B and D list a value of $11,707.00 and that Creditor has not filed a proof of claim.

RULING

While the court could deny this Motion without prejudice because of Debtor's failure to properly identify the creditor, Creditor has responded and presented the court with the correct named of the party holding a secured claim.

A review of the claims filed in this case shows that Creditor has not filed a claim in this case. Additionally, a review of the exhibits submitted by Creditor includes a cropped, obscured screenshot of a computer program that appears to be named "NADA Vehicle Evaluator." Exhibit C, Dckt. 32. Exhibit C does not appear to be an actual NADA Valuation Report.

Nevertheless, Creditor has disputed the Vehicle's value and has requested that the court schedule an evidentiary hearing to determine the Vehicle's value.

The court sets the following schedule for an evidentiary hearing on the Motion to Value:

A Evidence shall be presented according to Local Bankruptcy Rule 9017-1.

B On or before **xxxx, 2018**, the Parties shall each file with the court and serve on the other parties the list of witnesses they will present in their respective cases in chief (not including rebuttal witnesses).

C. Movant, shall lodge with the court and serve their Testimony Statements and Exhibits on or before **xxxx, 2018**.

D. Respondent, shall lodge with the court and serve Direct Testimony Statements and Exhibits on or before **xxxx, 2018**.

E. Evidentiary Objections and Hearing Briefs shall be lodged with the court and served on or before **xxxx, 2018**.

F. Oppositions to Evidentiary Objections shall be lodged with the court and served on or before **xxxx, 2018**.

G. The Evidentiary Hearing shall be conducted at **9:30 a.m. on xxxx, 2018**.

28. **17-27883-E-13** **DENISE ASHLEY** **MOTION TO VALUE COLLATERAL OF**
TAG-2 **Aubrey Jacobsen** **SANTANDER**
12-18-17 [18]

Final Ruling: No appearance at the January 23, 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 Debtor, Chapter 13 Trustee, Creditor, and Office of the United States Trustee on December 15, 2017. By the court's calculation, 39 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 Santander Consumer USA Inc. ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $8,678.00.

The Motion filed by Denise Ashley ("Debtor") to value the secured claim of Santander ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2014 Ford Fiesta ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $8,678.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on January 8, 2018. Dckt. 37. The Chapter 13 Trustee notes that Debtor provides no information about the Vehicle's style, condition, options, or needed repairs. He notes that Creditor filed Proof of Claim 1-1 for $13,121.39, listing $8,550.00 as secured and as the Vehicle's value.

RULING

While the court could deny this Motion without prejudice because of Debtor's failure to properly identify the creditor, Creditor has filed a Proof of Claim that actually asserts a lower value than Debtor presents in the Motion. Proof of Claim 1-1 asserts that the Vehicle is worth $8,550.00, but the Motion seeks a valuation at $8,678.00.

The lien on the Vehicle's title secures a purchase-money loan incurred on June 14, 2014, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $13,121.39. 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 $8,678.00, the value of the collateral asserted by Debtor in the Motion. *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 Denise Ashley ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Santander Consumer USA Inc. ("Creditor") secured by an asset described as 2014 Ford Fiesta ("Vehicle") is determined to be a secured claim in the amount of $8,678.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $8,678.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

29. **17-25884-E-13** **FELITA TONEY** **CONTINUED MOTION TO CONFIRM PLAN**
JJC-1 **Julius Cherry** **10-12-17 [15]**

Final Ruling: No appearance at the January 23, 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 Debtor, Chapter 13 Trustee, and Office of the United States Trustee on October 20, 2017. All creditors have not been served. By the court's calculation, 46 days' notice was provided. 42 days' notice is required. FED. R. BANKR. P. 2002(b); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Felita Toney ("Debtor") has provided evidence in support of confirmation. David Cusick ("the Chapter 13 Trustee") filed a Non-Opposition on October 30, 2017. Dckt. 20.

DECEMBER 5, 2017 HEARING

At the hearing, the court noted a defect in service in that no creditors were listed on the proof of service for the Motion. Debtor's counsel requested a continuance to address the defect, and the Chapter 13 Trustee concurred. Dckt. 24.

The court continued the hearing to 3:00 p.m. on January 23, 2018. *Id.*

PROOF OF SERVICE AND DECLARATION

A new proof of service was issued with service given on December 8, 2017, to Debtor, the Chapter 13 Trustee, the Office of the U.S. Trustee, and all creditors. Dckt. 26. Additionally, Glenn Hagele—the process server—filed a declaration sworn under penalty of perjury that service was provided on December 8, 2017. Dckt. 27.

RULING

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 Felita Toney ("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 12, 2017, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick ("the Chapter 13 Trustee") for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

30. 17-27484-E-13 DPC-1 | **EDUARDO/MONICA SANTOS** **Peter Cianchetta** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 12-21-17 [13]**

Final Ruling: No appearance at the January 23, 2018 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 December 21, 2017. 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.

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 hearing on the Objection to Confirmation of Plan is continued to 3:00 p.m. on January 30, 2018.

David Cusick ("the Chapter 13 Trustee") holding a secured claim opposes confirmation of the Plan on the basis that Eduardo Santos and Monica Santos ("Debtor") cannot afford to make the payments or comply with the plan under 11 U.S.C. §1325(a)(6). Debtors' plan relies on a Motion to Value Collateral being filed for Sierra Central Credit Union ("Creditor").

A review of Debtor's Plan shows that it relies on the court valuing Creditor's secured claim. That motion was filed on December 27, 2018. Dckt. 18. The hearing on the motion to value is set for January 30, 2018. The court continues the hearing on this Objection to 3:00 p.m. on January 30, 2018, to determine if the Plan is feasible after considering Debtor's motion to value.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by David Cusick ("the Chapter 13 Trustee") 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 hearing on the Objection to Confirmation of the Plan is continued to 3:00 p.m. on January 30, 2018.

31.	**17-28284-E-13** **TLA-1**	**RICARDO SANCHEZ** **Thomas Amberg**	**MOTION TO AVOID LIEN OF MARINA MARR** **1-9-18 [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 motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on January 9, 2018. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

This Motion requests an order avoiding the judicial lien of Marina Marr ("Creditor") against property of Ricardo Sanchez ("Debtor") commonly known as 1648 Quail Road, West Sacramento, California ("Property").

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on January 12, 2018. Dckt. 23. The Chapter 13 Trustee notes that Creditor is included in Class 2(C) of the Plan with a claim to be reduced to $0.00, and he notes that Creditor has not filed a proof of claim in this case.

DISCUSSION

A judgment was entered against Debtor in favor of Creditor in the amount of $6,425.39. FN.1. An abstract of judgment was recorded with Yolo County on March 28, 2017, that encumbers the Property.

FN.1. The Motion and Schedule D list Creditor's judicial lien as being in the amount of $2,800.00, but the attached judicial lien is for $6,425.39. *Compare* Dckt. 10 (Schedule D) *and* Dckt. 15 (Motion), *with* Exhibit D, Dckt. 19 (Judicial Lien).

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $497,000.00 as of the petition date. The unavoidable consensual liens that total $425,560.00 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.950 in the amount of $100,000.00 on Schedule C.

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

ISSUANCE OF A COURT-DRAFTED ORDER

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Ricardo Sanchez ("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 Marina Marr, California Superior Court for Yolo County Case No. CV-G-15-781, recorded on March 28, 2017, Document No. 2017-0007517-00, with the Yolo County Recorder, against the real property commonly known as 1648 Quail Road, West Sacramento, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

32. **17-26088-E-13** **DENNIS/PENNY MELUM**
Patricia Johnson

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY NATIONSTAR MORTGAGE, LLC
10-16-17 [20]

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. FN.1.

FN.1. Creditor is reminded that the Local Bankruptcy Rules require the use of a new Docket Control Number with each motion. LOCAL BANKR. R. 9014-1(c). Here, the moving party failed to use a Docket Control Number. That is not correct. The Court will consider the motion, but counsel is reminded that not complying with the Local Bankruptcy Rules is cause, in and of itself, to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(c)(l).

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 16, 2017. By the court's calculation, 57 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.

Nationstar Mortgage LLC d/b/a Mr. Cooper ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that the Plan does not cure arrears owed to it.

DEBTOR'S RESPONSE

Dennis Melum and Penny Melum ("Debtor") filed a Response on November 30, 2017. Dckt. 28. Debtor argues that there are no arrears because all of the payments have been made and that Creditor has "failed and refused to apply [the payments] correctly." *Id.* at 1:25–26. Debtor argues that $3,558.72 was paid on July 16, 2017, to bring their account current, but Debtor disagrees with $1,162.50 that Creditor asserts is owed.

Debtor argues that $105.00 charges for "NSF checks" are more than the industry standard, that a $965.95 charge for "Amount Incurred" is ambiguous, that sixty-three property inspection fees are unnecessary, and that "'BPO' fees and 'adversary costs'" are unclear and unrelated to any adversary issue Debtor was aware of.

Debtor requests that the court overrule the Objection because Creditor misapplied payments and provided misleading information about how its claim was calculated.

DECEMBER 12, 2017 HEARING

At the hearing, the court continued the matter to 3:00 p.m. on January 23, 2018. Dckt. 37. The court ordered Debtor to file a statement of proposed amendments to the Plan on or before January 9, 2018. Dckt. 39.

DEBTOR'S ATTORNEY'S RESPONSE

Debtor's Attorney filed a Response on January 4, 2018. Dckt. 41. Debtor's Attorney relates a series of events in which she has been unable to communicate with Creditor's attorney. In short, there were missed calls, unreturned voice messages, undelivered fax messages, and misinterpretations that have prevented Debtor from being able to resolve the problems raised by Creditor.

Debtor's Attorney argues that she does not what the $121,000.00 of non-exempt equity refers to, asserting that there should not be any non-exempt equity. The Response includes an attached plan that has two changes from the plan already on file: The Class 1 claims (for Chase Bank and Nationstar) are moved to Class 4, and Section 2.06 indicates that Debtor's Attorney will comply with Local Bankruptcy Rule 2016-1(c) for fees.

RULING

Creditor's objection is well-taken. The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim asserting $2,132.19 in pre-petition arrearages. The Plan does not propose to cure those arrearages. Debtor appears to be arguing an objection to Creditor's entire claim, not just about whether the proposed plan is confirmable. Instead of proposing how the Plan can cure the asserted arrearage, Debtor maintains that there is no arrearage.

To the extent that Debtor objects to Creditor's claim or to any notices of mortgage payment change, that type of objection must be raised as a separate pleading. At this time, Debtor has not presented

any evidence that there is no arrearage. Debtor has only questioned the amounts listed by Creditor. That defense strategy is not sufficient overcome the Objection. FN.1.

FN.1. Debtor may contend that given the very modest amount of the arrearage asserted, it is economically feasible to object, with the costs and expenses of such objection grossly exceeding the disputed amount. This contention fails to recognize several points. First, the note (¶ H) and deed of trust (¶ 6) upon which Creditor's claim is based have attorney's fees provisions, which provisions are made reciprocal by California Code of Civil Procedure § 1717. If Debtor were to be the prevailing party in such an objection to claim, then presumably Debtor would seek recovery of reasonable attorney's fees and costs from Creditor. Additionally, in addition to being made under penalty of perjury and being subject to civil and penal sanctions for an improper claim, it is also subject to the certifications pursuant to Federal Rule of Bankruptcy Procedure 9011 and the possible corrective sanctions that would flow from a breach of those certifications.

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 arrearages.

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 Nationstar Mortgage LLC d/b/a Mr. Cooper ("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.

33.	**17-26088-E-13** **DPC-1**	**DENNIS/PENNY MELUM** **Patricia Johnson**	**CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **11-15-17 [24]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on November 15, 2017. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. Dennis Melum and Penny Melum ("Debtor") have not made any plan payments;

B. The Plan relies upon an unfiled motion to value;

C. Debtor cannot comply with the Plan because the proposed treatments for two ongoing mortgage payments are unclear;

D. The Plan does not indicate how attorney fees will be handled; and

E. The Plan fails the liquidation analysis.

The Chapter 13 Trustee's objections are well-taken. The Chapter 13 Trustee asserts that Debtor is $1,475.00 delinquent in plan payments, which represents one month of the plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of Siskiyou Central Credit Union. Debtor has failed to file a Motion to Value the Secured Claim of Siskiyou Central Credit Union, however. Without the court valuing the claim, the Plan is not feasible. 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). Chase Bank and Nationstar Mtg are listed in Class 1 each with arrears of $0.00. Schedule J includes $969.69 for additional mortgage payments above ongoing payments, however, making the Class 1 treatment unclear. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Section 2.06 of the Plan does not indicate whether Debtor's counsel will seek attorney fees by separate motion or pursuant to Local Bankruptcy Rule 2016-1(a). The Chapter 13 Trustee does not oppose confirmation on this basis if the court determines that fees may be approved in the order confirming or that they will be determined by separate motion.

Finally, the Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor's plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). While Debtor has reported non-exempt equity in the amount of $121,000.00, and Debtor is proposing a twenty-six percent dividend to unsecured claims, additional equity exists. Debtor has not explained how, under the proposed plan and the schedules filed under penalty of perjury, the unsecured claimants are entitled to a twenty-six percent dividend totaling $24,994.99 when there may be upward of $121,000.00 in non-exempt equity.

DECEMBER 12, 2017 HEARING

At the hearing, the court continued the matter to 3:00 p.m. on January 23, 2018. Dckt. 38. The court ordered Debtor to file a statement of proposed amendments to the Plan by January 9, 2018. Dckt. 40.

DEBTOR'S ATTORNEY'S RESPONSE

Debtor's Attorney filed a Response on January 4, 2018. Dckt. 41. Debtor's Attorney relates a series of events in which she has been unable to communicate with Creditor's attorney. In short, there were missed calls, unreturned voice messages, undelivered fax messages, and misinterpretations that have prevented Debtor from being able to resolve the problems raised by Creditor.

Debtor's Attorney argues that she does not what the $121,000.00 of non-exempt equity refers to, asserting that there should not be any non-exempt equity. The Response includes an attached plan that has two changes from the plan already on file: The Class 1 claims (for Chase Bank and Nationstar) are moved to Class 4, and Section 2.06 indicates that Debtor's Attorney will comply with Local Bankruptcy Rule 2016-1(c) for fees.

CHAPTER 13 TRUSTEE'S REPLY

David Cusick ("the Chapter 13 Trustee") filed a Reply on January 10, 2018. Dckt. 45. The Chapter 13 Trustee argues that Debtor has addressed all but one of his concerns with confirmation of the Amended Plan. The Chapter 13 Trustee argues that Debtor's Attorney's discussion of informal contacts about this Objection are not relevant or productive to resolving the matter, but he argues that they are relevant to show that informal attempts to resolve the matter are not likely to succeed.

Regarding the Objection, the Chapter 13 Trustee states that Debtor is no longer delinquent, has set a motion to value for hearing, and he does not oppose a monthly administrative expense of $95.00 for Debtor's Attorney in Section 2.07. He proposes that amendment because even though Section 2.06 has been corrected, Section 2.07 does not currently contain any provision for the Chapter 13 Trustee to disburse $1,750.00 in attorney fees.

For the $121,000.00 non-exempt equity, the Chapter 13 Trustee states that it arose from Schedule B (Item 30), which listed a value of "Unknown" for money given to benefit Debtor's son from a second mortgage. Debtor appeared to admit at the Meeting of Creditors that the second mortgage was $130,000.00. Additionally, Schedule D shows two mortgages, the later of which is to Nationstar Mortgage and corresponds to Claim No. 2 for $143,000.00.

The Chapter 13 Trustee argues that Debtor has not disclosed sufficient information for the court to find that: (1) no written contract with Debtor's son exists as to whether monies given him are to be repaid; (2) no oral contract with Debtor's son exists as to whether monies given him are to be repaid; (3) if an oral contract with Debtor's son exists as to whether monies given him are to be repaid, then it is barred by the statute of limitations; and (4) Debtor's son is of sufficiently limited economic means that the repayment of any liability is unlikely.

RULING

Additionally, the gift or loan (if uncollectible) of monies to Debtor's son raises a good faith issue for Debtor. Further, if the debt is collectible, but Debtor elects not to collect it to preserve the transfer of these monies to Debtor's son so it will not be paid creditors, Debtor's good faith is again put in question.

At the hearing, counsel for Debtor reported, **xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx**.

Despite Debtor resolving some of the grounds for denying confirmation, the Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is sustained, and the Plan is not confirmed.

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

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

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

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

34. 17-26088-E-13 PJJ-2 | **DENNIS/PENNY MELUM** **Patricia Johnson** | **MOTION TO VALUE COLLATERAL OF SISKIYOU CENTRAL CREDIT UNION 12-13-17 [31]**

Final Ruling: No appearance at the January 23, 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 Creditor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on December 13, 2017. By the court's calculation, 41 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 Siskiyou Central Credit Union ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $15,891.00.

The Motion filed by Dennis Melum and Penny Melum ("Debtor") to value the secured claim of Siskiyou Central Credit Union ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2007 Cadillac Escalade ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $15,891.00 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 3-1 in the amount of $18,495.50, with $18,800.00 asserted as the Vehicle's value. Creditor has not opposed the Motion, however, and Creditor has not provided evidence as to its calculation of value.

The lien on the Vehicle's title secures a purchase-money loan incurred on February 25, 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 $19,400.00. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of $15,891.00, 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 Dennis Melum and Penny Melum ("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 Siskiyou Central Credit Union ("Creditor") secured by an asset described as 2007 Cadillac Escalade ("Vehicle") is determined to be a secured claim in the amount of $15,891.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $15,891.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

35. **17-26898-E-13** **ANA HENRIQUEZ** **OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS**
DPC-2 **Timothy McCandless** **12-15-17 [48]**

Final Ruling: No appearance at the January 23, 2018 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 Claim of Exemptions 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. **17-28098-E-13** **CHERYL HARMON** **MOTION TO VALUE COLLATERAL OF**
SJD-1 **Susan Dodds** **GOLDEN 1 CREDIT UNION**
1-5-18 [13]

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the 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, Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on January 5, 2018. By the court's calculation, 18 days' notice was provided. 14 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of Golden 1 Credit Union ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $11,484.00.

The Motion filed by Cheryl Harmon ("Debtor") to value the secured claim of Golden 1 Credit Union ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2014 Nissan Altima ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $11,484.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on January 8, 2018. Dckt. 19. The Chapter 13 Trustee states that Debtor provides "no other information about the vehicle as it relates to the

style, condition or options of the vehicle, or needed repairs." *Id.* at 2:3–4. The Chapter 13 Trustee notes that Creditor filed Proof of Claim 1-1 in the amount of $15,834.65, listing $11,484.00 as secured.

RULING

Creditor's Proof of Claim indicates that it agrees with Debtor's valuation of the Vehicle at $11,484.00.

The lien on the Vehicle's title secures a purchase-money loan incurred on October 23, 2013, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $15,834.65. 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 $11,484.00 the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Value Collateral and Secured Claim filed by Cheryl Harmon ("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 Golden 1 Credit Union ("Creditor") secured by an asset described as 2004 Nissan Altima ("Vehicle") is determined to be a secured claim in the amount of $11,484.00, 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 $11,484.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.