UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

February 2, 2021 at 2:00 p.m.

1.	**20-25368-E-13** **GC-1**	**ERIN ANDERSON** **Julius Cherry**	**MOTION TO VALUE COLLATERAL OF ALLY BANK** **12-28-20 [14]**

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 28, 2020. By the court's calculation, 36 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 Ally Bank ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $11,500.00.

The Motion filed by Erin Kate Anderson ("Debtor") to value the secured claim of Ally Bank ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 17. Debtor is the owner of a 2015 VW Passat ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $11,500.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on September 15, 2017, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $15,284.31. Proof of Claim, No. 1-1. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of $11,500.00, 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 Erin Kate Anderson ("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 Ally Bank ("Creditor") secured by an asset described as 2015 VW Passat ("Vehicle") is determined to be a secured claim in the amount of $11,500.00, 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 $11,500.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

2. **20-25390-E-13 DPC-1** **ANA BERMUDEZ Paul Bains** **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 1-19-21 [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 and Debtor's Attorney on January 13, 2021. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is overruled, Debtor having amended the proposed Plan.

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

A. Debtor failed to appear at the First Meeting of Creditors.

B. Debtor failed to date and sign the plan.

C. Debtor used wrong exemption codes for personal property.

D. The plan does not provide for all Debtors' projected disposable income.

DISCUSSION

Failure to Appear at 341 Meeting

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

The Continued Meeting of Creditors was held on January 21, 2021, and Trustee's Report indicates Debtor appeared.

Trustee filed a Status Report on January 26, 2021. Dckt. 27. Trustee reports that the Debtor is current and, after appearance at the continued Meeting, the hearing was concluded. The court therefore determines that Debtor's appearance has resolved this Objection.

Failure to date and sign the Plan

A review of the filed Plan shows that it does not include Debtor's signature.

Debtor filed a Reply to Trustee's Objection to Confirmation on January 27, 2021. Dckt. 29 Debtor explains having signed the plan on November 24, 2020, but that the filing of the plan without the signature was inadvertent. Debtor's Reply is supported by Exhibit A, Dckt. 30, a true and correct copy of the signed plan. The court therefore determines that this objection has been resolved in favor of Debtor.

Wrong Exemption Codes

According to Trustee, Debtor has wrongfully exempted personal property pursuant to C.C.P. §703.140(b)(1). A review of the original Schedule C filed on November 30, 2020 indicates Debtor exempted a Nissan Pathfinder 2013 pursuant to C.C.P §703.140(b)(1) in the amount of $3,047.00. Dckt. 1.

Debtor's Reply indicates having filed an amended Schedule C on January 19, 2021 to correct this issue. Dckt. 19. A review of the amended Schedule C shows the Vehicle is no longer exempted under C.C.P. §703.140(b)(1). Trustee acknowledges this amendment in his Status Report. *See* Dckt. 27.

The court therefore determines that this objection has been resolved.

Failure to Provide Disposable Income

The Trustee fourth basis for objecting to confirmation 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.

Trustee believes the Debtor is able pay a higher dividend than 0% to unsecured creditors if they provided to pay into the plan any tax refund received over $2,000. Trustee has received, and reviewed, the Debtor's 2019 IRS and Franchise Tax Board tax returns, which indicate that the Debtor received a total refund in the amount of $6,097.00.

In the Reply, Debtor agrees to add language in the order confirming the plan indicating the following:

"Debtor will pay into the Chapter 13 Plan all tax refunds received starting with the tax year 2021 in excess of $2,000.00 for that given year."

Trustee indicates that this language resolves Trustee's final objection. *See* Dckt. 27.

Debtor having addressed Trustee's concerns, the Plan complies with 11 U.S.C. §§ 1322 and 1325(a). The Objection is overruled, and the Plan is confirmed.

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

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

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

IT IS ORDERED that Debtor shall file as a separate pleading the full signed Plan (a copy of which is filed as Exhibit A, Dckt. 30) before submitting to the Chapter 13 Trustee the proposed order confirming the Plan.

IT IS FURTHER ORDERED that the Objection is overruled, and, Ana Isabel Bermudez's ("Debtor") Chapter 13 Plan filed on November 30, 2020, as amended to provide for the payment of that portion of annual tax refunds, if any, in excess to $2,000.00 into the Plan, is confirmed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

3. 19-25297-E-13 JOSHUA/SAMANTHA JARRELL MOTION TO MODIFY PLAN
AB-1 August Bullock 12-23-20 [49]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 23, 2020. By the court's calculation, 41 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is granted.

The debtor, Joshua Adam Jarrell and Samantha Jane Jarrell ("Debtor") seek confirmation of the Modified Plan because Debtor received insurance settlement and paid the outstanding balance of their mortgage, and the Trustee holds funds to pay the TD Auto claim in full, paying secured creditors claims in full. Declaration, Dckt. 51. The Modified Plan provides for Debtor to pay the remaining $37,000 Chapter 13 payoff balance in full using the remaining insurance proceeds. Modified Plan, Dckt. 49. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S RESPONSE

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response on January 15, 2021. Dckt. 55. Trustee asserts that under Section 7.01 of the Plan Trustee must demand turnover of the insurance funds to satisfy all allowed claims, trustee fees, and unpaid attorney's fees by no later than June 4, 2021.

Thus, Trustee requests that the order confirming the plan include language stating that Debtor must make a lump sum payment in the amount of $39,700 to pay off the plan with 100% to creditors with unsecured claims.

DISCUSSION

Trustee requests that the order confirming the modified plan include language that Debtor is to turn over the insurance funds in order to pay off the Plan with 100% to unsecured creditors.

At the hearing, xxxxxxxx

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Joshua Adam Jarrell and Samantha Jane Jarrell ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on December 23, 2020, as amended, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

4. **20-24311-E-13 DPC-2** **JASON DIVEN** **Bonnie Baker** **OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS 12-23-20 [52]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney, on December 23, 2020. By the court's calculation, 41 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 the Claim of Exemption pursuant to California Code of Civil Procedure § 704.140 in the claims for breach of the contracting business sale contract is sustained, and the exemption in that asset is disallowed in its entirety.

The Objection to Claimed Exemption pursuant to California Code of Civil Procedure § C.C.P. 704.030 in the $2,500 for Building Materials for the remodeling of Eagleville house is overruled.

The Chapter 13 Trustee, David P. Cusick ("Trustee"), objects to Jason Diven's ("Debtor") claimed exemptions under California law, asserting that Debtor used improper exemptions on amended Schedule C filed November 20, 2020 for a breach of contract claim pursuant to C.C.P. section 704.140 and for building materials pursuant to C.C.P. section 704.030.

C.C.P. § 704.10 Exemption

California Code of Civil Procedure § 704.140 provides an exemption to the extent necessary for the support of the judgement debtor for an award of damages or settlement arising out of a cause of action for personal injury. Debtor has claimed as exempt $95,000 for "former contracting business final contact payment, subject to lawsuit filed by contracting party with claim that is equivalent to final payment." Dckt 33. The Chapter 13 Trustee objects on the basis that this is a breach of contract claim not a personal injury claim, therefore such claim of exemption pursuant to California Code of Civil

Procedure § 704.140 is improper.

C.C.P. § 704.030 Exemption

California Code of Civil Procedure § 704.030 provides an exemption for material that in good faith will be used to repair or improve of a debtor's primary residence. Debtor has claimed as exempt $2,500 for "Building Materials for remodeling of Eagleville house." Dckt 33. The Chapter 13 Trustee objects on the basis that while Debtor indicated that he was "remodeling" his residence, Debtor has not provided the Trustee any estimates of repairs or improvements for his residence located in Eagleville, CA. According to Trustee, at the Meeting of Creditors, Debtor admitted that he is renovating apartments in the apartment building located in Cedarville, CA. Trustee is unclear when the building materials were purchased, what materials were purchased, and, if they were purchased for the sole purpose of repairing, or improving, the Debtor's primary residence. Thus, Trustee argues Debtor may be using an improper exemption.

DISCUSSION

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

Debtor filed a Response on January 18, 2021. Dckt. 63. Debtor states having filed amended Schedules A/B, C, and D no longer exempting "the asset whick[sic] generated the trustt's[sic] objection," and requesting Trustee withdraw the objection. *Id.*, at 2.

Debtor filed an Amended Response on January 29, 2021. Dckt. 70. Debtor asserts that an Amended Schedule C has been filed which does not exempt the breach of contract claim which generated the objection and request Trustee withdraw the objection now that it has been resolved by filing the Amended Schedule C. *Id.*, at 2. Debtor contends that Debtor has provided the Trustee with documentation regarding the repairs for Debtor's residence and Debtor testifies that these materials were purchased for his residence and that the intention is to use the materials to complete repairs on his residence in Eagleville. *Id.*; *see also* Declaration, Dckt. 68, at ¶ A:3-4.

A review of the Amended Schedule C filed by Debtor on January 14, 2021 shows that Debtor is no longer claiming an exemption for a personal injury claim or for the breach of claim Trustee refers to. Dckt. 61. Additionally, Debtor's claimed exemption for building materials pursuant to C.C.P. section 704.030 in the amount of $2,986 remains and Debtor testifies under penalty of perjury having furnished evidence to Trustee that shows he is properly claiming this exemption.

At the hearing, Trustee xxxxxxxx

As confirmed by the Debtor, the objection to claiming an exemption in the business sales contract proceeds is not contested, and that objection is sustained.

~~As confirmed by the Trustee, limiting the exemption to $2,986.00 in building materials earmarked for the Eagleville residence has been provided and **xxxxxxx**.~~

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claimed Exemptions filed by The Chapter 13 Trustee, David P. Cusick ("Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is sustained in part, and the claimed exemption for the breach of contract claim under California Code of Civil Procedure § 704.140 is disallowed in its entirety.
>
> ~~**IT IS FURTHER ORDERED** that the Objection is overruled in part, as to the claimed exemption in the amount of $2,986.00 in building materials to be used for repairing Debtor's primary residence under California Code of Civil Procedure § 704.030.~~

5. **20-20430-E-13 BLG-11** | **RAFAEL DE LA TORRE** **Chad Johnson** | **MOTION TO VALUE COLLATERAL OF YUBA-SUTTER ECONOMIC DEVELOPMENT CORP.** **1-12-21 [173]**

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

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

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, Chapter 13 Trustee, Creditor, creditors, and Office of the United States Trustee on January 12, 2021. By the court's calculation, 21 days' notice was provided. 28 days' notice is required.

Movant did not provide sufficient notice. At the hearing xxxxxxxxx

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 Yuba-Sutter Economic Development Corp. ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $76,047.71.

The Motion to Value filed by Rafael Pacos De La Torre ("Debtor") to value the secured claim of Yuba-Sutter Economic Development Corp. ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 175. Debtor seeks to value the collateral securing Creditor's claim in the amount of $76,047.71.

Debtor is the owner of the subject real property commonly known as 2684 State Hwy 20, Marysville, California, business property located at 8162 Halfword Blvd, Marysville, CA, and personal property identified as all business equipment, inventory, accounts & instruments of the Debtor ("Property"). As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID.

701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Trustee does not oppose the motion as Creditor is included the plan as a Class 2(B) claim. Dckt. 179. Trustee notes that Creditor has filed a Proof of Claim 6-1 for $83,059.00, claiming $83,059.00 as secured. *Id.*

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

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

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

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

DISCUSSION

According to Debtor, Creditor has a non-purchase money security interest in the following:

a. Debtor's residence located at 2684 State Hwy 20, Marysville, CA

i. Value of Residence at time of filing: $405,000.00
ii. Mortgage Balance at time of filing: $365,953.76
iii. Remaining Equity at time of filing: $39,046.22

b. All business equipment, inventory, accounts & instruments of the Debtor (hereinafter the "ASSETS")

i. Debtor's ASSETS at the time of filing totaled $37,001.49

1. 2015 Utility Car Trailer - $1,500
2. Non-Opp Forklift, Refrigerator & Shelves - $1,000.00
3. Office Equipment - $500.00
4. Feed Supplements & Propane - $27,910.68

5. Union Bank...9612 Business Checking Acct. - $1,018.84
6. US Bank...8950 Business Checking Acct. - $0.34
7. Tri Counties Bank ... 4067 Business Checking Acct. - $50.00
8. Union Bank...2344 Business Checking Acct. - $30.70
9. Tri Counties Bank ... 8766 Business Checking Acct. - $4,990.93

c. Debtor's business property located at 8162 Halfword Blvd, Marysville, CA

i. Value of Business Property at time of filing: $462,500.00
ii. Bill Thompson Balance at time of filing: $492,301.19
iii. Remaining Equity: $0.00

Debtor seeks to value the collateral securing Creditor's claim at $76,047.71. This valuation is based by adding the following:

a. Equity in Debtor's Residence: $39,046.22
b. Value of Debtor's ASSETS: $37,001.49
c. Equity in Debtor's Business Property: $0.00

Creditor's secured claim is determined to be in the amount of $76,047.71, the value of the collateral, and therefore payments in the secured amount of the claim shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). 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 Rafael Pacos De La Torre ("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 Yuba-Sutter Economic Development Corp. ("Creditor") secured by the following assets:

Real Property located at 2684 State Hwy 20, Marysville, CA
Real Property located at property located at 8162 Halfword Blvd, Marysville, CA
Personal Property identified as:
1. 2015 Utility Car Trailer
2. Non-Opp Forklift, Refrigerator & Shelves
3. Office Equipment
4. Feed Supplements & Propane

5. Union Bank...9612 Business Checking Acct.
6. US Bank...8950 Business Checking Acct.
7. Tri Counties Bank ... 4067 Business Checking Acct.
8. Union Bank...2344 Business Checking Acct.
9. Tri Counties Bank ... 8766 Business Checking Acct.

is determined to be a secured claim in the amount of $76,047.71, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The above properties are encumbered by senior liens which consumer all value in excess of $76,047.71.

6. **20-25340-E-13 EMM-1** **DEAN JONES** **Gabriel Liberman** **OBJECTION TO CONFIRMATION OF PLAN BY LAKEVIEW LOAN SERVICING, LLC** **1-14-21 [21]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on January 14, 2021. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

Lakeview Loan Servicing, LLC ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that Debtor's plan fails to provide for the curing of the default on the Creditor's claim.

DISCUSSION

Creditor's objections are well-taken.

Failure to Cure Arrearage of Creditor

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts $19,299.40 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.

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 Lakeview Loan Servicing, LLC ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

7. **20-21241-E-13 DRE-2** | **LORNE/JAMIE WILLIAMS** **Randall Ensminger** | **MOTION TO CONFIRM PLAN** **12-18-20 [65]**

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 December 18, 2020. By the court's calculation, 46 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied.

The debtor, Lorne Howard Williams and Jamie Lynn Williams ("Debtor"), seek confirmation of the Second Amended Plan. The Second Amended Plan provides for monthly plan payments of $3,624.00 per month until the completion of the plan, and a 1% dividend to unsecured claims totaling approximately $1,896.39. Amended Plan, Dckt. 69. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on December 18, 2020. Dckt. 81. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor is delinquent in plan payments.

B. Debtor fails to explain the significant decrease in income.

C. The Debtor may be unable to make the Plan payments.

DISCUSSION

Delinquency

The Chapter 13 Trustee asserts that Debtor is $3,624.00 delinquent in plan payments, which represents one month of the $3,624.00 plan payment. Before the hearing, another plan payment will be due. According to the Chapter 13 Trustee, the Plan in § 2.01 calls for payments to be received by the Chapter 13 Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Good-Faith Filing

Trustee alleges that the Plan was not filed in good faith. *See* 11 U.S.C. § 1325(a)(3). Good faith depends on the totality of the circumstances. *In re Warren*, 89 B.R. 87 (9th Cir. BAP 1988). Thus, the Plan may not be confirmed. Factors to be considered in determining good faith include, but are not limited to:

> 1) The amount of the proposed payments and the amounts of the debtor's surplus;
>
> **2) The debtor's employment history, ability to earn, and likelihood of future increases in income;**
>
> 3) The probable or expected duration of the plan;
>
> **4) The accuracy of the plan's statements of the debts, expenses and percentage of repayment of unsecured debt, and whether any inaccuracies are an attempt to mislead the court;**
>
> 5) The extent of preferential treatment between classes of creditors;
>
> 6) The extent to which secured claims are modified;
>
> 7) The type of debt sought to be discharged, and whether any such debt is nondischargeable in Chapter 7;
>
> 8) The existence of special circumstances such as inordinate medical expenses;
>
> **9) The frequency with which the debtor has sought relief under the Bankruptcy code;**
>
> **10) The motivation and sincerity of the debtor in seeking Chapter 13 relief;** and
>
> 11) The burden which the plan's administration would place upon the trustee.

In re Warren, 89 B.R. 87, 93 (B.A.P. 9th Cir. 1988) (quoting *In re Brock*, 47 B.R. 167, 169 (Bankr. S.D. Cal. 1985) (emphasis added).

Trustee argues that Debtor continues to fail to explain a significant decrease in their income on form 122C-1 in interest/dividends/royalties from $6,825.73, for Debtor Lorne, now reduced to $469.66 and added interest/dividend/royalties income of $451.16 for Debtor Jamie. As previously noted by Trustee, Debtor does not offer any explanation as to why Debtor Lorne's amount was overstated in the original 122C-1 and no amount was stated for Debtor Jamie, which now brings Debtor under median income.

Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). The Trustee further opposes confirmation on the basis that Debtor's Ensminger Provisions refer to documents that have not been filed with court, namely a forbearance agreement and an application for modification of the loan. Thus, Trustee is not certain Debtor can make the payments called for by the plan and comply with the plan. [Fn.1.]

FN. 1. The court's reading of the Additional Provisions to the Plan that PNC Mortgage is to be paid $2,316.63 a month pending conclusion of the loan modification process. However, Trustee is concerned that a referenced "Forbearance Agreement" might be contrary to the making of the future adequate protection payments.

In Paragraph 7.02 in the proposed Plan Additional Provisions (Dckt. 69 at 7) reference is made that the Forbearance Agreement provides for curing a pre-petition delinquency, with payments to begin in month 9 of the Plan.

At the hearing **xxxxxxx**

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 the debtor, Lorne Howard Williams and Jamie Lynn Williams ("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.

8. **20-25296-E-13 DPC-1 7 thru 8** | **LESSLIE/MARANDA SPARKS Randall Ensminger** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 1-13-21 [14]**

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, on January 13, 2021. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. Debtor failed to appear at the First Meeting of Creditors.

B. Debtor may be unable to afford the payment plan.

DISCUSSION

Trustee's objections are well-taken.

Failure to Appear at 341 Meeting

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

and be questioned by Trustee and any creditors who appear represents a failure to cooperate. *See* 11 U.S.C. § 521(a)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

The Continued Meeting of Creditors is set for February 11, 2021, at 1:00 p.m.

Failure to Afford Plan Payment

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Trustee argues that the plan does not appear to be a realistic assessment of the budget for a family of 5. Debtor's budget as indicated in Schedule J does not provide adequately in the budget for:

A. Maintenance or repair of Debtor's residence - providing for $0.00 in expense;

B. Food and household supplies - $575 in expenses for five persons (which, after allowing $75 a month for household goods, leaves $1.11 per person per meal in a 30 day months);

C. Clothing - $50 in expenses for five persons;

D. Entertainment - $0.00,

E. Medical care and insurance expenses - $40 for medical expenses for five persons and nothing for insurance (either on Schedule I or Schedule J); and

F. Pet care - $26, with no pet listed on Schedule A/B.

Objection, Dckt. 14 at 2. *See* Schedule J, Dckt. 1. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

At the hearing, xxxxxxxx

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

9. 20-25296-E-13 JM-1 LESSLIE/MARANDA SPARKS Randall Ensminger OBJECTION TO CONFIRMATION OF PLAN BY ONEMAIN FINANCIAL GROUP, LLC 1-14-21 [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, and Office of the United States Trustee on January 14, 2021. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

Objector has not specified clearly whether the Objection is noticed according to Local Bankruptcy Rule 9014-1(f)(1) or (f)(2). The Notice of Objection states that Objector comes forth to object to confirmation, which objection will be heard at a confirmation hearing on February 2, 2021, and a hearing will be held to object to the confirmation of a Chapter 13 Plan. [Fn.1.] Based upon the date of filing of the Objection, the court treats the Objection as being noticed according to Local Bankruptcy Rule 9014-1(f)(2). Moreover, Movant has failed to meet the requirements regarding viewability of tentative rulings on court website. 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).

FN. 1. The court notes that this language is a bit clunky and may confuse other parties in interest that there is a separate motion to confirm that is before the court. A notice is not a prayer, as the "Comes now Secured Creditor to object," but is a notice that a hearing will be conducted on Secured Creditor's objection to confirmation. While not fatal in this Contested Matter, some "enterprising" opposing counsel might seek to exploit such clunky language and sow confusion in that matter.

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.

OneMain Financial Group, LLC ("Creditor" or "Objector") holding a secured claim opposes confirmation of the Plan on the basis that:

A. Debtor's plan fails to provide for the curing of the default on the Creditor's secured claim.

B. The plan fails to provide for adequate protection payments.

C. Debtor has failed to include Creditor's secured claim in their plan or to properly value the collateral.

D. The plan fails the Chapter 7 Liquidation Test.

E. The Plan fails to provide for retention of the Creditor's lien securing the Secured Creditor's claim.

DISCUSSION

Creditor's objections are well-taken.

Failure to Provide for a Secured Claim

Creditor asserts a secured claim of $7,190.05 in this case. Debtor has listed Creditor and this obligation as an unsecured debt, specifically as a "personal loan" in Schedule E/F in the amount of $7,403.00. Creditor asserts a security interest in a 2013 Ford Edge. A copy of the Proof of Claim filed in this case, with Purchase and Security Agreement attached, is provided as Exhibit A in support of the Objection. Dckt. 21.

This is the only vehicle Debtor lists on Schedule A/B for the family of five persons.

Creditor alleges that the Plan is not feasible and violates 11 U.S.C. § 1322(b)(5) because it contains no provision for payment of Creditor's obligation or cure of the pre-petition arrearage, which is secured by Debtor's vehicle. *See* 11 U.S.C. § 1325(a)(6).

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

11 U.S.C. § 1322(b) specifies the provisions that a plan may include at the option of the

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

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

A. Provide a treatment that the debtor and creditor agree to (11 U.S.C. § 1325(a)(5)(A)),

B. Provide for payment in full of the entire claim if the claim is modified or will mature by its terms during the term of the Plan (11 U.S.C. § 1325(a)(5)(B)), or

C. Surrender the collateral for the claim to the creditor (11 U.S.C. § 1325(a)(5)(C)).

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

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

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

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by OneMain Financial Group, LLC ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

10. **20-21910-E-13** **TIMOTHY TROCKE**
FF-8 **Gary Fraley**
10 thru 11

SUPPLEMENTAL OBJECTION TO CLAIM OF ROGER ANDERSON, TRUSTEE OF THE RWA TRUST, CLAIM NUMBER 2-1
12-29-20 [182]

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

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

Sufficient Notice Not Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on December 29, 2020. By the court's calculation, 35 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

Movant did not provide sufficient notice. At the hearing, xxxxxxxx

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Objection to Proof of Claim Number 2-1 of Roger Anderson, Trustee of the RWA Trust dated March 14, 2014 is xxxxxxx .

The Supplemental Objection to the "Notice of Postpetition Mortgage Fees, Expenses, and Charges" filed on December 21, 2020 of Roger Anderson, Trustee of the RWA Trust dated March 14, 2014, is xxxxxxx .

Timothy Tobias Trocke, the Chapter 13 Debtor, ("Objector") requests that the court disallow the claim of Roger Anderson, Trustee of the RWA Trust dated March 14, 2014 ("Creditor"), Proof of Claim No. 2 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of $126,635.02. Objector asserts that the claim fails to satisfy the documents requirements of Federal Rule of Bankruptcy Procedure section 3001(c)(2).

On December 30, 2020 Objector filed a Supplemental Objection to Claim no. 2. Dckt. 182.

Objector asserts that the "Notice of Postpetition Mortgage Fees, Expenses, and Charges" that was filed on December 21, 2020 as a supplemental claim altering Claim no. 2 for the additional amount of $24,335.40 fails to satisfy the documents requirements of Federal Rule of Bankruptcy Procedure section 3001(c)(2).

Debtor argues that in the interest of judicial economy and costs to all parties, that determination of all issues with respect to the Notice be heard as part of the original Objection to Claim filed on December 21, 2020 and set for hearing for February 2, 2021.

REVIEW OF PROOF OF CLAIM 2-1

The court begins with a review of Proof of Claim 2-1 which is signed by Creditor's counsel of record in this Contested Matter. The court reviews Proof of Claim 2-1, considering each section of the Proof of Claim and attachments thereto.

A. Parts 1 and 2 - Identify the Claims and Information About the Claim as of the Date the Case was Filed

1. Creditor is identified as "Roger Anderson, Trustee of the RWA Trust Dated March 14, 2014."

2. Creditor has not acquired the claim from anyone else.

3. Notices are to be sent to Debtor's counsel and payments made to "FCI Lender Services, Inc.," which is stated to have the same phone number and the email as that of Creditor's counsel (though a P.O Box mailing address rather than Creditor's counsel's street address).

4. Proof of Claim 2-1 is the original claim filed (not amending a prior claim).

5. No prior proof of claim has been filed for this claim.

6. The last four digits of Debtor's account number is provided.

7. The claim is in the amount of $126,835.02, "plus 18% interest," with Creditor noting that the loan matures on September 1, 2021, which would be during the pendency of this bankruptcy case.

   a. Creditor affirmatively states that the $126,835.02 amount includes interest or other chases and "Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A)." Creditor affirmatively states he knows what is required by the law and has complied with the law.

8. The basis of the claim is "Money loaned."

9. The Claim is secured by real estate.

a. It is perfected by "Deed of Trust (1671 Rosalind St., Sacramento California. 95838)."

b. Creditor does not state a value for the property securing the claim.

c. Creditor states that the "Amount of the claim that is $126,635.02* plus 18% interest." By the "*" Creditor repeats that the loan matures in the future, September 1, 2021, "during the pendency of this case." (It appears that the word "secured" before the dollar amount has been deleted from the proof of claim form used for Proof of Claim 2-1.)

d. The amount of the claim as unsecured is left blank.

e. Creditor then states that the amount necessary to cure any default that existed as of the April 1, 2020 filing of the current bankruptcy case is the full $125,635.02 amount for which Creditor restates that it does not mature until more than a year in the future on September 1, 2021.

f. Creditor fails to respond to the question requiring the interest rate to be stated and whether it is fixed or variable.

10. Creditor states that the claim is not based on a lease.

11. Creditor states that the claim is not subject to a right of setoff.

12. Creditor states that this is not a priority claim.

Proof of Claim No. 2-1, Parts 1 and 2, identified by paragraph number in the Proof of Claim.

B. Part 3 of Proof of Claim 2-1 is the signature by Counsel for Creditor, declaring under penalty of perjury that the information provided in Parts 1 and 2 are true and correct under penalty of perjury, with the date May 4, 2020, and provides law firm address.

C. The Mortgage Proof of Claim Attachment is the first attachment to Proof of Claim 2-1.

1. In Part 1, Creditor states the Debtor's case number, identifies the Debtor, identifies the creditor and loan servicer, that it is a fixes accrual interest loan, and,

a. Provides the following required financial information about the loan:

(1) Principal Balance is $100,000,

(2) Accrued interest as of April 1, 2020 is $16,578.34,

(3) Fees, costs due are $10,056.68,

(4) The Total Debt is "$126,635.02*," with the "*" tying to the following statement:

(a) "*Secured Creditor's Claim is approximately $126,635.02, plus 18% interest. This loan is set to mature on 9/1/2021, during the pendency of Debtor's instant Chapter 13 bankruptcy case."

(5) The Total pre-petition arrearage is "$126,635.02*," with the "*" tying back to the statement that the $126,635.02 obligation does not mature until more than a year in the future.

b. The information not provided by Creditor in the Mortgage Proof of Claim Attachment includes:

(1) The pre-petition principal and interest arrearage,

(2) pre-petition fees due,

(3) Escrow deficiency,

(4) Projected shortage,

(5) Funds on hand,

(6) But, in this Part 3 of the Attachment Creditor does affirmatively state that all of the $126,635.02, for an obligation that matures September 1, 2021, more than a year in the future, is the entire pre-petition arrearage that must be paid by Debtor.

D. No itemization of the fees, costs, expenses, charges, interest is provided by Creditor. But Creditor does affirmatively state, as part of this Proof of Claim under penalty of perjury, that the pre-petition arrearage is the entire $126,635.02 obligation that Creditor also states does not mature until September 1, 2021, more than a year after this case was filed.

E. The next attachment is a copy of the $100,000.00 Promissory Note dated August 1, 2018. The note states that interest only payments of $833.33 are due on the Note, beginning October 1, 2018, until the Maturity Date of September 1, 2021. Note, ¶

2.1. Debtor is also responsible for paying Creditor's loan servicer fees. *Id.*, ¶ 2.1.1.

F. The final attachment to Proof of Claim 2-1 is a copy of a Deed of Trust recorded on August 8, 2018, given by Debtor to secure the obligation owed to Creditor.

Thus, from Proof of Claim No. 2-1, one knows that Creditor asserts that the secured claim totals $126,635.02, which is comprised of $100,000.00 in principal, $16,578.34 in interest, and an additional $10,056.68 of non-specified costs and fees. With a monthly interest only payment of $833.33, then the $16,578.34 in pre-petition interest represents 19.89408757 months of default in such payments. It is not clear from Proof of Claim No. 2-1 why this is not a round number of months. Possibly interest is being charged against the $10,056.68 of non-specified fees and costs.

That is the Proof of Claim Creditor presented to the court and Debtor, which elicited the present Objection to the $10,056.68 of non-specified costs and fees that are required to be specified in a proof of claim.

REVIEW OF NOTICE OF POSTPETITION MORTGAGE FEES, EXPENSES AND CHARGES (Filed December 21, 2020)

Debtor has also objected to the Notice of Postpetition Mortgage Fees, Expenses and Charges based on the same grounds - Creditor has not provided the required itemization of such additional amounts. The information provided in the Notice consists of:

A. Non-Escrow insurance advance of $1,298.23.

This amount is itemized and identified for Debtor.

B. Attorney's Fees totaling a post-petition amount of "See Below"

1. On the second page of the notice, after the signature block, the following typing appears:

a. 6/1/20 Attorney's Fees $5,898.75
b. 7/6/20 Attorney's Fees $81.19
c. 7/6/20 Attorney's Fees $2,516.81
d. 7/31/20 Attorney's Fees $1,629.08
e. 9/3/20 Attorney's Fees $3,498.59
f. 9/15/20 Attorney's Fees $1,806.08
g. 9/21/20 Attorney's Fees $2,349.00
h. 10/22/20 Attorney's Fees $4,856.17
i. 12/7/20 Attorney's Fees $413.50

While there is no breakdown of billing, as one would do for a fee application, there is an itemization that Creditor is asserting the right to recover the attorney's fees incurred on each of the days above. Whether such amounts are reasonable could well be the subject of discovery, such as requesting a detailed time and billing report.

C. The Notice is signed by Creditor's Counsel.

OPPOSITION BY CREDITOR

Creditor hustled and filed an opposition not just to the original Objection, but the Supplemental Objection on January 19, 2021. The opposition pleadings consist of:

A. Response to Objection to Claim, Dckt. 190 (11 pages),

B. Declaration of Creditor, Dckt. 191 (6 pages),

C. Exhibits to the Declaration of Creditor, Dckt. 192-197

1. Exhibits 1, 2, 3 are the loan documents.

2. Exhibit 4 is the Notice of Default and Election to Sell and the Notice of Trustee's Sale.

3. Exhibit 5 is an Invoice dated January 8, 2021 from California TD Specialists providing an itemization of the foreclosure costs and expenses totaling $3,755.48.

    a. These costs run from the period August 19, 2019 through December 31, 2020.

4. Exhibit 6 is a letter from Creditor's counsel's law firm to Debtor dated August 13, 2019. It states that is it in response to a Notice of Recession given by Debtor. There is also an October 22, 2019 transmittal letter from Creditor's counsel's law firm stating that copies of the executed loan documents were sent to Debtor.

5. Exhibit 7 is an Order of Discharge and the Final Decree in Debtor's Chapter 7 case 19-27969.

6. Exhibit 8 is the Schedules A/B-D from Debtor's Chapter 7 case.

7. Exhibit 9 is a copy of Proof of Claim 2-1 filed by Creditor in this current Chapter 13 case.

8. Exhibit 10 is a Statement Dated October 31, 2019, on OSC letterhead for forced plan insurance on Debtor's property, with a cost of $1,246.15.

9. Exhibit 11 is the Notices of Postpetition Mortgage Fees, Expenses, and Charges filed in this Chapter 13 case by Creditor, and information for costs and expenses.

    a. One filed on October 21, 202 stating that Debtor's owes $1,912.50 for attorney's fees incurred April 25, 2020.

b. One filed December 21, 2020, stating Debtor owes $1,286.23 for insurance advances and $23,049.17 in attorney's fees for a period running from June 1, 2020 through September 7, 2020.

c. Copy of a June 15, 2020 letter from Creditor stating that if proof of insurance is not provided, forced place insurance costing $1,246.75 will be obtained.

d. Billing statements by Creditor's counsel's law firm:

(1) April 10, 2020 - April 22, 2020....$1,912.50.

(2) April 27, 2020 - May 22, 2020.....$5,362.50

(3) May 28, 2020.....$75.00

(4) May 27, 2020 - June 17, 2020.....$2,325.00

(5) June 29, 2020 - July 24, 2020.....$1,522.50

(6) July 27, 2020 - August 25, 2020....$3,322.50

(7) August 30, 2020 - Sept. 14, 2020....$1,725.00

(8) Sept. 14, 2020 - Sept. 17, 2020.....$1,245.00

(9) Sept. 29, 2020 - Nov. 11, 2020.....$4,609.10

(10) Nov. 13, 2020 - Nov. 30, 2020.....$1,418.03

e. A Notice of Post Petition Mortgage Fees, Expenses, and Charges for additional attorney's fees of:

(1) December 22, 2020.....$1,927.50

(2) January 15, 2021.....$2,637.08

(3) January 18, 2021.....$6,650.00

f. Billing statements by Creditor's counsel's law firm:

(1) Nov 28, 2020 - Dec 22, 2020.....$1,927.50

(2) Dec 29, 2020 - Jan 15, 2021.....$2,637.08

g. A Transaction Statement for Prenovost, Normandin, Daw & Rocha for the period January 4, 2021 through January 18, 2021, for $6,650.00.

h. Invoice from California TD Specialists for the period August 19, 2019 through December 31, 2020 for $3,755.48 (this appears to be a duplicate of above).

10. Exhibit 12 is a June 15, 2020 letter from Creditor to Debtor stating that there will be $1,246.75 in forced place insurance if Debtor does not provide proof of insurance. (This appears to duplicate the letter above.)

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).

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

Federal Rule of Bankruptcy Procedure section 3001(c)(2) requires that creditor include or attach certain documents with their proof of claim in order to substantiate their claim. Specifically, FRBP section 3001(c)(2)(A) requires a creditor to provide "an itemized statement of the interest, fees, expenses, or charges." Additionally, pursuant to FRBP 3001(c)(2)(B) requires a creditor to provide "a statement of the amount necessary to cure any default as of the date of the petition." Finally, section 3001(c)(2)(C) requires a creditor with a secured claim over a debtor's principal residence, must attach the "appropriate official form."

Here, Proof of Claim 2-1 did suffer from failure to itemize the various expenses and charges.

For a Notice of Postpetition Mortgage Fees, Expenses and Charges, the Bankruptcy Rules impose a similar requirement. Federal Rule of Bankruptcy Procedure 3002.1(c) provides:

> (c) Notice of Fees, Expenses, and Charges. The holder of the claim shall file and serve on the debtor, debtor's counsel, and the trustee a notice itemizing all fees, expenses, or charges (1) that were incurred in connection with the claim after the bankruptcy case was filed, and (2) that the holder asserts are recoverable against the debtor or against the debtor's principal residence. The notice shall be served within 180 days after the date on which the fees, expenses, or charges are incurred.

Here, a review of the Notice filed on December 21, 2020 shows that, though including the amounts allegedly owed, the Notice does not contain supplemental documents itemizing the fees, expenses or charges. Thus, the December 21, 2020 Notice fails to meet the requirements of FRBP 3002.1.

In the responsive pleadings, there appears to be itemizations for Debtor and his counsel to review.

Creditor filed Amended Proof of Claim 2-2 on January 26, 2021. The Official Form for a mortgage is still not properly completed, but is followed by six (6) pages breaking down account activity from August 7, 2018 through January 21, 2021. Creditor also filed an Amended Notice of Postpetition, Mortgage Fees, Expenses, and Charges on January 19, 2021. This amended Notice, also attached to amended Proof of Claim 2-2, provides a billing summary of attorney's fees and an invoice listing the different charges related to the loan since August 2019 through December 2020.

As addressed above, Proof of Claim 2-1 suffers from shortcomings and some clearly inaccurate statements under penalty of perjury (such as the entire obligation must be paid to cure the pre-petition arrearage). Creditor, and counsel, may feel frustrated that Debtor has elected to go through multiple bankruptcies, but such is not an excuse.

Looking at the Opposition filed, it appears to outweigh the simple Objection – No Itemization Has Been Provided.

Conversely, Debtor has "prosecuted" this case in a frustrating manner. This Chapter 13 case was filed on April 1, 2020, and it was clear Debtor would be challenged in paying his way out of the financial hole without promptly selling the Property securing Creditor's claim. Debtor was purportedly funding his plan through gifts and renting out a room to his girlfriend's sister. Other than $942 a month in Social Security, Debtor had no income. Amended Schedule I, Dckt. 34. On Amended Schedule J Debtor purported to have only $928 in expenses. Dckt. 35. This was so low because Debtor had no housing cost (mortgage/rent), no home maintenance expense, no property taxes, no insurance, no transportation expense, and no medical expense. *Id*.

As Debtor attempted to fight off Creditor's Motion for Relief From the Stay, the court had the opportunity to comment about Debtor's conduct,

> Questionable Prosecution of Case
>
> A review of the Docket indicates that notwithstanding Debtor's Counsel arguing that the Property was "put on the market on September 27, 2020, and a offer was received on October 16, 2020," Debtor has not sought to obtain authorization to employ a real estate broker (such authorization necessary for such professional to be compensated for the services provided), nor has the Debtor filed a motion for authorization to sell the property for a sale Debtor hopes to quickly close.
>
> Ignoring these legal requirements under the Bankruptcy Codes is not indicative of a Debtor who is diligently pursuing a sale in good faith
> . . .
> However, Debtor has demonstrated that he does not have the financial and business knowledge to prosecute this case (the court giving the Debtor and Counsel the benefit of the doubt that the failure to obtain authorization to employ a real estate broker was mere inadvertence and not part of a scheme to get "free" real estate broker services). At this juncture, it appears the court has three choices:

1. Grant Relief From the Stay and Allow Movant, who clearly knew that this Debtor would not be able to pay the loan back, to foreclose and take nearly $100,000 in equity as a "bonus" for having made a loan with an 18% interest rate;

2. Order the appointment of a personal representative as provided in Federal Rule of Civil Procedure 25, as incorporated into Federal Rules of Bankruptcy Procedure 7025 and 9014, and then have that personal representative hire legal counsel to prosecute the sale of the Property, pay the claims in this case, and "save" for Debtor his exempt equity (after paying the costs and expenses of the personal representative and the professionals hired by the personal representative); or

3. Convert this case to Chapter 7, in which Debtor could not get a discharge in light of his December 2019 Chapter 7 case in which he was granted a discharge, and have the Chapter 7 trustee conduct hire the professionals, conduct the sale, have all of the trustee's and trustee's professionals expenses and fees paid, and "save" the debtor the equity in the property.

Though normally the court would order a debtor in this situation to make adequate protection payments from the monthly plan payments, Debtor's defaults have documented that he is bereft of the financial ability to pay. As show on the original and various amended Schedules I filed in this case, Debtor has no income and is dependant upon gifts from his significant other and his sister to survive from day to day. See latest Amended Schedule I; Dckt. 83, in which Debtor lists having $942 a month in Social Security, which is only 22.7% of his stated monthly income. His sister provides $1,760, which is 42% of the stated monthly income, and his significant other provides $942 (exactly the same as the stated amount of Social Security benefit received), which is an additional 22.7%. The balance of monthly income is stated to be $500 in room rent paid by "Girlfriend's Sister").

Civil Minutes, Dckt. 127. (Debtor's counsel did notify the court that in November 2020 Debtor suffered a heart attack and was hospitalized, which restricted counsel's ability to communicate with Debtor for a period of time.)

At the hearing, **xxxxxxx**

11. 20-21910-E-13 TIMOTHY TROCKE MOTION TO CONFIRM PLAN
FF-6 Gary Fraley 12-17-20 [149]

Final Ruling: No appearance at the February 2, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on December 17, 2020. By the court's calculation, 47 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Timothy Tobias Trocke ("Debtor") has provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on January 19, 2021. Dckt. 199. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Timothy Tobias Trocke ("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 December 17, 2020, is confirmed. Debtor's Counsel

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

12. **20-24700-E-13** **WILLIAM REDDIN** **MOTION TO APPROVE STIPULATION FOR USE OF CASH COLLATERAL AND ASSUMPTION OF EXECUTORY CONTRACT**
12 thru 14 **Timothy Halmiton** **1-4-21 [63]**

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 January 4, 2021. By the court's calculation, 29 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The court shortens time to that provided in light of the opposition filed and the issue being addressed in connection with the Motion to Confirm.

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

The Motion for Approval of Stipulation Between Creditor Robert Croswhite and the Chapter 13 debtor, William Donald Reddin is Denied.

Creditor Robert Croswhite ("Movant") requests that the court approve a stipulation with the Chapter 13 debtor, William Donald Reddin ("Debtor"), which provides that the Debtor will assume an executory agreement with Movant and pay monthly payments of $2,945.10, retain the cash collateral proceeds to pay reasonable and necessary living and operating expenses for Debtor's business and pay disposable income to the Trustee pursuant to his proposed plan.

MOTION

The grounds stated with particularity in the Motion (Fed. R. Bankr. P. 9013) are:

> The Motion is based on the record in this case, the Declaration of Rob Croswhite in support of the Motion and the Stipulation attached as Exhibit 1 to the Declaration, the points and authorities, and the evidence and argument presented at the hearing.

Motion, p. 1:21-23; Dckt. 63. It appears that the task of identifying the grounds upon which relief is requested is assigned to the court and court's staff to mine from the records in this bankruptcy case.

Federal Rule of Bankruptcy Procedure 9013 also request that the relief requested be stated with particularity. Here, the relief is clearly stated as follows:

> The Motion seeks approval of the Stipulation, under which the Debtor will assume an executory agreement with Movant and pay monthly payments of $2,945.10; retain the cash collateral proceeds to pay reasonable and necessary expenses, including living and operating expenses for the Debtor's business, Precision Pump & Water Works, and pay disposable income to the Chapter 13 Trustee pursuant to the proposed Chapter 13 plan

Id., p. 1:24-28. As stated in the Motion, once the stipulation is approved the Debtor will first assume some form of executory contract and then start paying monthly payments of $2,945.10 to someone. Then Debtor will retain "cash collateral proceeds" to pay reasonable and necessary living expenses and his business expenses. Then, some unidentified amount of "disposable income" (not stated to be projected disposable income) to the Chapter 13 Trustee to fund the Plan that Debtor has proposed.

REVIEW OF THE RECORD AND SUPPORTING PLEADINGS

Filed as Exhibit A to the Declaration of Rob Croswhite is a document titled "Stipulation For Use of Cash Collateral and Assumption of Executory Contract. Dckt. 67. The Stipulation is executed by the Debtor, Movant Rob Croswhite, counsel for Movant, counsel for Debtor, and counsel for the Chapter Trustee.

Rob Croswhite provides his Declaration in support of his Motion. Dckt. 66. His testimony includes the following:

A. He is the former owner of Precision Pump & Water Works (the "Business"), which business is now owned by Debtor. Declaration, ¶ 1; Dckt. 66.

B. He testifies that he sold the Business to Debtor on or about June 30, 2016. *Id*., ¶ 2. He authenticates the Purchase Agreement as being attached to the Stipulation filed as Exhibit 1. He further testifies that under the Purchase Agreement he was granted a security interest in "Accounts Receivable, Equipment, Assets, Inventory, Tangible and Intangible Property and any and all other assets subject to the Asset Purchase Agreement." *Id*.

C. He testifies that he perfected his security interest with a UCC-1 filing on August 3, 2016, and authenticates the copy of the UCC-1 which is attached to the Stipulation. *Id*. ¶ 3.

D. He further testifies that under the terms of the Purchase Agreement he is prohibited from entering into any competing business in El Dorado County to the one he sold to Debtor. *Id*. ¶ 4.

The Operative Provisions (the effective terms between the Debtor, bankruptcy estate, and Movant) in the Stipulation are set forth on pages 2-7 of the Stipulation. These terms, identified by the paragraph number used in the Stipulation, Dckt. 67, provide:

1. The Stipulation will be retroactively effective to October 8, 2020, (two months prior to it being executed and three months prior to the motion being filed), and will remain in effect only until March 31, 2021. The term may be extended by a further stipulation, if so reached, between Movant and Debtor.

    a. The terms expressly provide that the Stipulation is only binding when approved by the court.

2. Debtor to deposit all "Cash Collateral into Debtor's existing business bank account, which monies shall used exclusively for funding the items specified in Paragraph 3 of the Stipulation and the Budget as Provided in Paragraph 5 of the Stipulation.

The Stipulation includes in the Recital of what is cash collateral. First, the Recital states that "All pre and postpetition accounts receivable are property of the estate pursuant to 11 U.S.C. section 541" and that further all of the pre and postpetition accounts receivable are "cash collateral as that term is defined in 11 U.S.C. § 363(a)." *Id*. ¶ D.

3. The permitted uses of cash collateral provided in Paragraph 3 of the Stipulation are:

    a. Pay Movant monthly payments of $2,945.10, commencing retroactively to November 1, 2020;

    b. Pay Debtor's reasonable and necessary living expenses and operating expenses for the business pursuant to the Budget provided for in Paragraph 5 of the Stipulation. If expenses in total exceed 10% of the Budget or any line item exceeds 20% of the Budget, Movant must first permit it; and

    c. "Disposable income" is to be paid to the Chapter 13 Trustee.

4. Debtor shall report monthly to Movant written reports of operations, including revenues and sources of revenue (disclosure of customers), expenses, and balance in the cash collateral account.

5. Within 30 days of executing the Stipulation, Debtor will provide a Budget.

6. The Stipulation then states that Debtor is not permitted to use Cash Collateral for any purposes other than to "pay expenses directly related to the operation of [the Business].

This appears to conflict with allowing Debtor to pay living and other expenses with Cash Collateral.

7. As adequate protection for the use of cash collateral to the extent of any post-petition diminution in value of the Collateral:

a. Debtor grants Movant a post-petition security interest upon all accounts receivable deposited into the business account.

This term appears to be 180 degrees in conflict with Movant's assertion that all post-petition accounts receivable are subject to Movant's pre-petition security interest.

b. The security interest granting on the post-petition accounts receivable shall have priority over all existing and future liens and encumbrances - except for the pre-petition security interest of Movant asserted to already cover post-petition accounts receivable, and liens on equipment which is subject to pre-petition lease or financing obtained by Debtor.

It is unclear why an exception is made for liens on equipment when the Stipulation appears to only provide for the granting of a post-petition security interest in post-petition accounts receivable.

8. The post-petition security interest in post-petition accounts receivable is automatically perfected.

9. The court's approval of the Stipulation shall also constitute an assumption of the Purchase Agreement by Debtor.

10. In Paragraph 10, it is that "this order is entered" (it appears that the Debtor and Movant are referencing the Stipulation and are not purporting to say that they are issuing an order) that Debtor and Movant reserved rights and remedies each has, including Movant asserting that the terms of the Stipulation do not provide adequate protection.

11. Movant and his agents may conduct inspection of and enter the Business on forty-eight hours notice.

12. The Stipulation is binding on and enforceable against the successors in interest of Movant and the Debtor, including any Chapter 7 or Chapter 11 Trustee.

CHAPTER 13 TRUSTEE NON-OPPOSITION

The Chapter 13 Trustee, David P. Cusick ("Trustee") filed a Non-Opposition on January 19, 2021. Dckt. 82. Trustee notes that Debtor is delinquent under the proposed plan; Trustee has not

disbursed any payments to creditor Robert Croswhite; and Creditor failed to use a docket control number but that Creditor has filed a statement of errata seeking to correct the issue that the pleadings should have included the docket control number "PP-1."

OPPOSITION OF CREDITOR PRICE

Creditors James D. Price and Sharee E. Price ("Creditor Price") oppose the motion on the basis that the proposed stipulation unfairly discriminates against and substantially harms Creditor Price, who are (according to a recent filing by Debtor) the only unsecured creditors of this estate. Dckt. 85. Creditors Price argue that based on the Debtor's schedules, Movant's collateral had a value of not more than $13,050 as of the petition date and is thus an undersecured claim which should be bifurcated pursuant to 11 U.S.C. section 506(a). *Id.*, at 27-28.

Creditor Price alleges that given Debtor's social security payments are made on the 3rd of each month, there is cause to believe that some of the funds held in Debtor's bank accounts were not proceeds of accounts receivable and thus were not cash collateral of Movant. *Id.*, at 3:24-27. Creditor points to *In re Premier Golf Properties, LLP*, 477 B.R. 767, 772 (9th Cir. B.A.P. 2012) for the premise that the burden of proof is on the creditor with secured claim to show that funds/property held by the debtor are proceeds of the creditor's collateral. Here, Creditor argues the accounts receivable generated post-petition cannot be Movant's collateral because they emanate from services rendered by Debtor post-petition, and as such Movant cannot claim the receivables were proceeds of Movant's collateral. *Id.*, at 4:2-4. Specifically, Creditor Price contends that because Debtor had no accounts receivable as of the petition date as per his sworn schedules, Croswhite cannot claim that any post-petition receivables were proceeds of Croswhite's collateral. Thus, Creditor asserts that Movant has not met his burden that the funds are proceeds of the collateral. Creditor argues that Movant has almost been paid the full amount of his secured claim with post-petition funds and is not entitled to additional adequate protection.

Moreover, Creditor Price argues that the assumption of the executory contract (the non-compete agreement) is not in the best interest of creditors because it would allow for a payment of over $92,000 if the contract is assumed where even Movant values such a contract at less than $4,000. According to Creditor, an assumption cannot be approved if the contract in question would be substantially at the expense of unsecured creditors. *In re Chi-Feng Huang*, 23 B.R. 798, 801 (9th Cir. B.A.P. 1982); *In re PG&E Corp.*, 603 B.R. 471, 488- 89 (Bankr. N.D. Cal. 2019). Creditor argues that in this case, the benefit of the assumption only goes to Movant, provides *de minimis* benefit to the estate, and damages Creditor Price because their claim would be subordinated to the entirety of Movant's claim.

SUPPLEMENTAL POINTS AND AUTHORITIES FILED BY MOVANT

Following a discussion at an earlier hearing in this case in connection with Debtor's proposed Plan, Movant filed a Supplemental Points and Authorities addressing several issues. Dckt. 74. The first relates to the timeliness of the Stipulation and Motion, and that it silently requests retroactive relief back to November 1, 2020.

Movant states that back in mid-October 2020 (if the court reads the Supplemental Points and Authorities correctly) Movant demanded that Debtor stop using the asserted cash collateral. Supplemental Points and Authorities, p. 2:3-8. Discussions ensued between Movant's counsel and Debtor's counsel, and on October 27, 2020, Movant's counsel sent Debtor's counsel a stipulation with

"suggested terms." *Id*., p. 2:10-11. Debtor's counsel was suffering from a power outage at his office, but communicated that he would review it with the Debtor.

On November 5, 2020, the final version of the cash collateral stipulation was prepared and submitted to the Chapter 13 Trustee's counsel. *Id*, p. 2:15-17. Twenty-five (25) days later Movant's counsel learned that Debtor's counsel had mailed a hard copy of the stipulation to Trustee's counsel, but that there was "confusion over which version was sent." *Id*., p. 2:17-19. On November 30, 2020 Movant's counsel emailed the correct version of the Chapter 13 Trustee's counsel.

Then, twenty-two (22) days later Movant's counsel "finally" (in Movant's words) received the executed Stipulation on December 22, 2020. Notwithstanding the year end holidays, the Motion to Approve the Stipulation was promptly filed on January 4, 2021, but not set for hearing until February 2, 2021.

In apparently requesting three month retroactive relief, the basis for it is stated to be that Debtor's counsel was dealing with 341 meetings, providing documents to the Trustee, filing the Plan, and attempting to address opposition to the Plan.

Scope of Pre-Petition Lien
to Post-Petition Assets

Movant asserts that the Business was purchased by Debtor from Movant, and Movant has a security interest in all of its assets, including accounts receivable. Going to the Purchase Agreement attached to the Stipulation, the Business is identified as a sole proprietorship operation by Movant. Movant is to sell"substantially all" of the business assets, including goodwill. Purchase Agreement, Recital C; Dckt. 67 at 10.

The tangible assets being sold - tools and equipment are listed on Attachment 1 to the Bill of Sale that is attached to the Purchase Agreement. *Id*. at 22. These items are the common tools (such as hack saws, lifting straps, 1000' well depth sounder, hoses, a 1998 Dodge pickup and 2004 Ford pickup, and the like that one would expect, and not any substantial fabrication equipment). The Purchase Agreement allocates $35,000 of value (including the two pickups) to the personal property. *Id*. at 12.

The greatest value, $125,000, is assigned to "intangible property/goodwill" and $85,000 is assigned to "Contracts/Customer List." All but $3,000 of the remaining purchase priced is assigned to the Non-Compete Agreement, giving it a value of $57,000. *Id*.

Movant correctly cites the court to 11 U.S.C. § 522 to address the post-petition effect of a security interest. In pertinent part, this section begins with the basic point of law:

> § 552. Postpetition effect of security interest
>
> (a) Except as provided in subsection (b) of this section, property acquired by the estate or by the debtor after the commencement of the case is not subject to any lien resulting from any security agreement entered into by the debtor before the commencement of the case.

11 U.S.C. § 552(a). Thus, as a debtor in possession, Chapter 11 trustee, or Chapter 13 debtor labor post-

petition, assets acquired after the commencement of the case are not subject to pre-petition security interests. However, there is a significant exception stated in paragraph (b)(1) of 11 U.S.C. § 552:

> (b)
> (1) Except as provided in sections **363**, 506(c), 522, 544, 545, 547, and 548 of this title, if the debtor and an entity entered into a security agreement before the commencement of the case and **if the security interest** created by such **security agreement extends to property of the debtor acquired before the commencement of the case and to proceeds, products, offspring, or profits of such property**, then such security interest extends to such proceeds, products, offspring, or profits acquired by the estate after the commencement of the case to the extent provided by such security agreement and by applicable nonbankruptcy law, except to any extent that the court, after notice and a hearing and based on the equities of the case, orders otherwise.

11 U.S.C. § 552(b)(1) [emphasis added].

So, if the pre-petition security interest extends to the "proceeds," "products," "offspring," or "profits" of the property subject to the security interest, then the security interest that has attached pre-petition to an asset will extend to post-petition proceeds, products, offspring, or profits of the pre-petition to which the security interest attached.

Here, Movant sold in 2016 a sole proprietorship, for which 76% of the sales price was for contracts/customer lists, intangible property/goodwill, and the non-compete, and only 0.98%, $3,000, of the $305,000 purchase price was for inventory. Movant contends that any and every dollar generated by Debtor working every day at his sole proprietorship, using new inventory purchased since the 2016 sale of the Business, and using the equipment purchased ($35,000, including the two trucks, which is 11.5% of the $305,000 purchase price), are the "proceeds," "products," or "profits" of the sole proprietorship Movant handed over more than four years ago.

What is clear, if Debtor had done nothing, there would be no accounts receivable. Thus, there would be no "proceeds," "products," or "profits" being generated by the Business. This is not like an investment fund or interest in a business that was transferred and that fund or interest spins off monthly or quarterly distributions without regard to the transferee doing anything.

DISCUSSION

Here, Debtor seeks to assume an executory agreement with Movant and pay monthly payments of $2,945.10, retain the cash collateral proceeds to pay reasonable and necessary living and operating expenses for Debtor's business and pay disposable income to the Trustee pursuant to his proposed plan. The Motion to Approve the Stipulation was filed and was set for hearing. A total of 29 days notice was provided with oppositions and responses to be heard at the hearing. The Motion's Certificate of Service provides for all who received notice of this Stipulation.

The Stipulation is based on Debtor's operation of a water drilling and pumping service business which he purchased from Movant in 2015. Movant took a seller's note for part of the purchase price, and filed Proof of Claim 2 for $92,091.55. The executory contract is a five (5) year non-compete provision in the purchase agreement (Exhibit 1 to the Stipulation, Dckt. 67) which expires

in June of 2021 and whose value over the five (5) year term was stipulated to be $57,000.

As the court discussed at the earlier hearing, Debtor has provided the court with his statements under penalty of perjury of his assets, which include this sole proprietorship business he purchased more than four years ago.

On Schedule A/B Debtor lists the 1998 Dodge pickup, stating it has 350,000 miles on it and is worth $5,500. The 2004 Ford pickup is not listed on Schedule A/B and is no longer an asset of the Debtor or the estate. Dckt. 12 at 2-3.

Debtor's statement of value of the equipment subject to Movant's lien appear to have decreased substantially in value. Debtor's tools had a value of only $1,500 when this case was filed and Debtor had a "spare pump" with a value of just $800. Debtor's current customer list has a value of only $400. *Id*. at 9. Debtor does not identify any other business assets that relate to the Purchase Agreement with Movant.

Debtor's sole proprietorship had no accounts receivable when this case was filed, but there are three El Dorado Savings Bank accounts listed, with the values of $3,000, $6,000, and $250. *Id*. at 5. The source of the funds or the purpose of the accounts (such as business account where proceeds of accounts receivable would be deposited, Social Security account) is not stated.

On Schedule I, Debtor lists gross "wages" of $2,778 from being a self-employed contractor. Dckt. 18 at 1. No deductions from such "wage" are listed on Schedule I.

On Schedule J Debtor states having ($2,580) in monthly expenses. Dckt. 19. No provision is made for income or self-employment taxes.

In contrast with Schedule I, on the Statement of Financial Affairs Debtor states that in the first nine months of 2020 he generated $182,269 in gross income from his business. In 2019 it is stated to be $242,923, and in 2018 it is stated to be $267,567. If the $2,778 is Debtor's monthly profit from his business, the he would make $33,336 profit on $250,000 of gross income, or a 13% profit ratio. Dckt. 22 at 2.

On his Chapter 13 Statement of Current Monthly Income, Debtor states having gross monthly receipts of $22,784 and monthly ordinary and necessary expenses of ($20,006), which give him $2,778 of net monthly income. Dckt. 23 at 1.

On November 11, 2020, Debtor filed an Amended Schedule J. Dckt. 37. The court could not identify an amended Schedule I being in the multiple filings made for each Schedule, Statement of Financial Affairs, and other documents that are routinely filed as one document in a bankruptcy case.

On Amended Schedule J Debtor states that he has monthly income of $5,243. Dckt. 37 at 3. The basis for this increase is not apparent and is inconsistent with the prior information provided under penalty of perjury. Debtor's expenses have stayed at ($2,580), with Debtor now stating he has $2,663 a month in monthly net income.

Looking at the financial information provided by Debtor under penalty of perjury he cannot afford to make the payments of $2,945.10 a month to Movant. It is a financial impossibility.

With respect to the exception found in 11 U.S.C. § 552(b)(1), the court does not read it to impose an involuntary servitude requirement on the Debtor nor on the bankruptcy estate in this case. From the evidence presented, Debtor is a contractor who is in the well maintenance business. He has to get up in the morning, go to work at the business, and with sweat on his brow do the labor to fulfill the post-petition contractual obligations so as to generate revenues. Some portion may relate to the $1,500 of equipment he is using, and that might cause the value to decrease below $1,500. There may be some accounts receivable monies that are used to buy supplies, materials or new equipment that is used to generate the new accounts receivable and payments on the new contracts. Then again, there may be money from other sources.

Some or all of the $9,250 in the bank accounts may be proceeds of pre-petition accounts receivable. As of now, there has been no tracing of the source of those monies.

Movant provides the court with citations to other bankruptcy cases and district court decisions concerning the application of 11 U.S.C. § 552. As the express language of 11 U.S.C. § 552(a) provides, the pre-petition lien will not attach to post-petition assets – except as permitted in 11 U.S.C. § 552(b). The normal state law application of the state law Commercial Code that locks down all future assets is ameliorated by Congress in 11 U.S.C. § 552(a). *See Finanical Sec. Assurance v. Days Cal. Rivershide Ltd. Pshp. (In re Days Cal. Riverside Ltd. Pshp)*, 27 F.3d 374, 375 (9th Cir. 1994) ("Congress has carefully regulated the post-petition effect of a security interest.")

One of the cases cited by Movant is the Bankruptcy Appellate Panel Decision, *Arkison v. Frontier Asst Mgmt., LLC (In re Skagit Pac. Corp.)*, 316 B.R. 330 (B.A.P. 9th Cir. 2004). With respect to post-petition accounts receivable for a creditor having a pre-petition security interest in pre-petition accounts receivable, the Bankruptcy Appellate Panel stated the clearly understood principle:

> **Proceeds of post-petition accounts receivable do not fall within the § 552(b) proceeds exception**. *In re HRC Joint Venture*, 175 B.R. 948, 953 (Bankr. S.D. Ohio 1994); *In re Texas Tri-Collar, Inc.*, 29 B.R. 724, 726-27 (Bankr. W.D. La. 1983) (receivables generated by the debtor after filing bankruptcy petition are "in no way proceeds of prepetition accounts receivable"); *In re Cross Baking Co.*, 818 F.2d 1027, 1032 (1st Cir. 1987) (**post-petition receivables generally do not constitute proceeds of pre-petition receivables**). Therefore, a creditor's security interest only encompasses the cash collected on existing pre-petition accounts.
>
> It appears that pre-petition balances were outstanding on various Skagit accounts at the time of the bankruptcy filing, and were paid post-petition. There is no question that money collected on these accounts constituted proceeds of FAM's pre-petition security interest in accounts receivable. However, the money was then used, with the creditor's consent, to pay for such expenses as utilities, supplies, wages, and operations. In the process of doing so, new accounts receivable were created, including the DOT Account Receivable. These second and third-generation proceeds were then commingled in an account with non-proceeds.
>
> Furthermore, **revenue generated by the operation of a debtor's business, post-petition, is not considered proceeds if such revenue represents compensation for goods and services rendered by the debtor in its everyday**

> **business performance.** *In re Cafeteria Operators*, 299 B.R. 400, 405 (Bankr. N.D. Tex. 2003). **Revenue generated post-petition solely as a result of a debtor's labor is not subject to a creditor's pre-petition interest**. *Id.* Thus, **any portion of the DOT Account Receivable attributable to the Debtor's services as part of the manufacturing or production of the modules would not be considered proceeds under § 552(b)**. And **what is produced by the debtor's added value by its labor (or the value added by others' labor) throughout the process of the reorganization effort will likewise not be subject to a creditor's pre-petition interest.** *In re Package Design & Supply Co.*, 217 B.R. 422, 426 (Bankr. W.D.N.Y. 1998) (consequences of added value may cause a commingling or other traceability problem that destroys the lien entirely).

Arkison v. Frontier Asset Mgmt., LLC (In re Skagit Pac. Corp.), 316 B.R. 330, 336 (B.A.P. 9th Cir. 2004) [emphasis added].

In discussing the above case law, the Bankruptcy Appellate Panel then expressly states that with respect to post-petition accounts receivable:

> Case law supports the proposition that HN10 where it is only post-petition acts which generate an account receivable, those post-petition receivables will not be considered proceeds because there is no interest in, or connection to, the right in the account receivable created pre-petition. Unless the court grants a replacement lien in new post-petition accounts receivable, the money used from the collected pre-petition accounts no longer creates proceeds under § 552(b).

Id., 336. The Bankruptcy Appellate Panel then states in Footnote 5 the reason that bankruptcy judges see so many first day or expedited hearing motions that involve pre-petition accounts receivable and cash collateral:

> Generally, a creditor must act quickly to prevent dissipation of its collateral. A debtor may not use cash equivalents of collateral or its cash proceeds without either the consent of secured parties with an interest in the cash, or the permission of the court. 11 U.S.C. § 363(c)(2). Where the creditor consents to the use, it has the corresponding right to seek, from the court, both a lien on property and priority to the extent necessary to insure adequate protection. Here, the secured creditor did not act prudently to avail itself of Bankruptcy Code provisions to protect its secured position. 11 U.S.C. § 363(e). If the creditor fails to obtain such protection, its consent to the use of proceeds may destroy its right to trace those proceeds into other products. *Lovelady v. Lovelady*, 21 B.R. 182, 184-85 (Bankr. D. Or. 1982). Moreover, the secured creditor's protected interest is limited to no more than it had on the date of filing. With the secured creditor's consent to the use of cash collateral, and no order for a replacement lien, the money used from the bank account is gone when it is used--i.e., it does not regenerate into new post-petition cash proceeds without a specific court order.

Id., FN.5.

In *Qmect, Inc. v. Burlingame Capital Partners II, L.P.*, 373 B.R. 682 (N.D. Cal. 2007), cited

by Movant, the bankruptcy court had granted a post-petition adequate protection lien for the creditor. The creditors were also found to have traced the post-petition accounts to their pre-petition collateral. In the case now before the court, no replacement liens have been granted, there has been no tracing, there has been no showing that post-petition accounts receivable are not being generated from other resources, such as the Debtor's labor.

A First Circuit Court of Appeals decision addressing the scope of post-petition reach of a pre-petition security interest in accounts receivable is *In re Cross Baking Co.*, 818 F.2d 1027 (1st Cir. 1987), which holds:

> As discussed above, section 363(c)(2) of the Code permits a debtor-in-possession to use cash collateral only if all creditors holding a security interest in the collateral have consented or the court has issued an order authorizing such use. 11 U.S.C. § 363(c)(2). NHBDC does not contest the bankruptcy court's finding, affirmed by the district court, that it consented to Cross' use of the cash collateral during the attempted reorganization, but it highlights the fact that the bankruptcy court found this consent to be "conditioned upon a subsequent approval of a stipulated agreement by the court." . .
> . . .
> We also note that the "condition" placed on NHBDC's consent -- the issuance of a stipulated "cash collateral order" -- was at all times within the control of NHBDC, even though counsel for Lepage had assumed the primary responsibility of ensuring that the order was issued. Like the district court, we cannot excuse NHBDC's failure to procure the necessary order simply because it "chose to rely on Lepage to do its work for it." Indeed, counsel for NHBDC conceded at oral argument that "all parties were somewhat at fault" for the failure to obtain it. We therefore conclude that there is no merit in NHBDC's argument that its conditional consent requires us to find that the money collected by the trustee constitutes the proceeds of the pre-petition receivables.
>
> In sum, NHBDC's consent permitted Cross to spend (and lose) the proceeds of NHBDC's cash collateral that were paid to the business during the attempted reorganization. As we noted earlier, the amount paid on virtually every account during reorganization equalled or exceeded the balances owed at the time Cross filed its bankruptcy petition. Thus, the bankruptcy court correctly found that all of the money at issue in this case (except for the small amount which the trustee concedes to be payments on pre-petition receivables) was collected in satisfaction of receivables that arose after the filing of a bankruptcy petition. Such post-petition receivables generally do not constitute "proceeds" of pre-petition receivables under section 552(b), *see First National Bank of Lafayette v. Texas Tri-Collar, Inc.*, 29 Bankr. 724, 727 (Bankr. W.D. La. 1983), and the arguments offered by NHBDC do not persuade us otherwise. Accordingly, we hold that the "proceeds" net cast by section 552(b) fails to capture the cash generated by Cross' post-petition receivables

Here, it is likely that some proceeds from pre-petition accounts receivable were or may need to be used in the post-petition operation. Movant would have the right to be adequately protected if allowed to be used. But that is not to rake off $2,945.10 a month, plus take all the new accounts receivable.

The Motion also seeks to have the Debtor assume the contract, purportedly to gain advantage of three or four months of a non-compete provision. It is unclear what value that has or what value there is for the bankruptcy estate in assuming, and turning into an administrative expense, any obligations under the pre-petition Agreement.

Debtor offers no evidence in support of the Motion. Rather, all the court is presented is with the Movant's Declaration as to making the sale more than four years ago.

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 and stated orally on the record at the hearing.
>
> The Motion to Approve Stipulation filed by Creditor Robert Croswhite ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Approval of Stipulation between Creditor and the Chapter 13 debtor, William Donald Reddin is denied.

13. **20-24700-E-13 DPC-1** **WILLIAM REDDIN** **Timothy Hamilton** **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **11-25-20 [43]**

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and creditors, on November 25, 2020. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is denied.

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

A. Debtor failed to provide his Social Security number.

B. Debtor failed to file documents related to business.

C. Debtor failed to file business documents required by Schedule I.

D. Debtor failed to provide accurate amount of disposable income.

E. Debtor inaccurately completed a Schedule I field.

DISCUSSION

Trustee's objections are well-taken.

Failure to Provide Social Security Number

Every individual debtor shall bring to the meeting of creditors under 11 U.S.C. § 341 evidence of social security number(s), or a written statement that such documentation does not exists. FED. R. BANK. P. 4002(b)(1)(B). Without the required documents, the Trustee is unable to properly examine the Debtor at the meeting of creditors.

Failure to File Documents Related to Business

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

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

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

Failure to File Business Documents Required by Schedule I

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

Failure to Provide Disposable Income

The Plan may not comply with 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.

Trustee argues that Debtor's Calculation of Disposable Income (Form 122C-1) includes an improper expense at line 5 for ordinary and necessary business expenses of $20,006.00. Trustee points the court to *Drummond v. Wiegand (In re Wiegand),* 386 B.R. 238 (B.A.P. 9th Cir. 2008), where the Bankruptcy Appellate Panel for the Ninth Circuit concluded that a chapter 13 Debtor may not deduct business expenses from gross receipts to calculate current monthly income.

Trustee further notes that based on the gross receipts of $22,784.00, Debtor's annualized current monthly income is $274,488.00, placing Debtor over the applicable median family income of $60,360.00.

Trustee requests that Debtor file new and accurate Forms 122C-1 and C-2 so that it may be

determined if the plan complies with 11 U.S.C. Section 1325(b)(1)(B).

Inaccurate Schedule I filed

11 U.S.C. § 1325(a)(1) provides for confirmation of a plan if it complies with Chapter 13 provisions and other applicable Code provisions. According to Trustee, at the Meeting of the Creditors, Debtor testified that he has a monthly income of $5,243.00 instead of $2,778.00 as listed on Schedule I. Debtor amended his Schedule J to reflect the income of $5,243.00 but has failed to file an amended Schedule I to list $5,243.00 monthly income instead of $2,778.00. Trustee requested that Schedule I be amended to update the income information. The Amended Schedule has not yet been filed. The Plan does not comply with 11 U.S.C. § 1325(a)(1).

December 15, 2020 Hearing

The Parties stipulated to continue the hearing a month, to January 12, 2021. The reason for the continuance was due to scheduling conflicts for Debtor's counsel.

January 12, 2021 Hearing

As of the court January 8, 2021 review of the docket for the preparation of this pre-hearing disposition, no other documents or pleadings have been filed.

The hearing is continued to be conducted in conjunction with the hearing on a Motion to Approve Cash Collateral and Assume Executory Contract.

Stipulation regarding Cash Collateral and Assumption of Executory Contract

The court denied Creditor Croswhite's Motion to Approve Stipulation on February 2, 2021.

February 2, 2021 Hearing

On the face of this Chapter 13 Plan, Debtor will make monthly plan payments of $500, plus the additional $2,945.10 that he sought to obligate himself to by a cash collateral stipulation and assumption of purchase agreement to Creditor Croswhite. The $500 a month payment is to pay the required 10% Trustee fees and a 10% dividend to $100,000 of unsecured claims. The Plan term is 36 months.

In Debtor's Amended Schedule J Debtor purports to have $2,663.00 in monthly net income (having without explanation doubling his monthly income, without making any provision for income or self employment taxes to $5,243). But even with that, he cannot afford to make the $2,945.10 payment he proposes to Creditor Croswhite and $500 into the Plan.

At the hearing, xxxxxxxx

The proposed Chapter 13 Plan does not comply with 11 U.S.C. § 1322, § 1325; and 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, and orally on the record.
>
> 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 sustained and the Chapter 13 Plan is not confirmed.

14. **20-24700-E-13 KPW-1** | **WILLIAM REDDIN** **Timothy Hamilton** | **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAMES D. PRICE AND SHAREE E. PRICE 11-25-20 [47]**

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 November 30, 2020. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

James D. Price and Sharee E. Price ("Creditor"), creditors holding a secured claim, oppose confirmation of the Plan on the basis that:

A. Debtor fails to provide disposable income.

B. Debtor's plan discriminates against creditors.

C. Debtor's plan should provide for payments for 60 months.

D. Debtor is not prosecuting this bankruptcy case in good faith.

December 2, 2020 Joint Stipulation

On December 12, 202, Debtor, Creditor, and Trustee filed a joint stipulation to continue the hearing on this Objection to January 12, 2021 due to scheduling conflicts of Debtor's counsel. Dckt. 54. On December 5, 2020, the court issued an Order to continue the hearing to January 12, 2021. Dckt. 55.

DISCUSSION

Failure to Provide Disposable Income

Creditor alleges in the Objection to Confirmation 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.

Debtor proposes to pay $500 per month, which is far less than his net disposable income. Moreover, the Plan proposes to pay only a single creditor, Croswhite. No explanation is provided for this discrimination. Thus, the court may not approve the Plan.

Plan Term is Fewer Than 60 months

The Plan violates 11 U.S.C. § 1325(b)(4)(B) because the Plan will complete in less than the permitted sixty months where Debtor has more than the median income. According to Creditor, Debtor proposes a plan for 36 months but has failed to disclose in his schedules Debtor's social security income. Debtor has proposed a plan term of 36 months, but Debtor has failed to propose a plan which includes all of his creditors.

Good-Faith Filing

Trustee alleges that the Plan was not filed in good faith. *See* 11 U.S.C. § 1325(a)(3). Good faith depends on the totality of the circumstances. *In re Warren*, 89 B.R. 87 (9th Cir. BAP 1988). Thus, the Plan may not be confirmed. Factors to be considered in determining good faith include, but are not limited to:

> 1) The amount of the proposed payments and the amounts of the debtor's surplus;
>
> **2) The debtor's employment history, ability to earn, and likelihood of future increases in income;**
>
> 3) The probable or expected duration of the plan;

4) The accuracy of the plan's statements of the debts, expenses and percentage of repayment of unsecured debt, and whether any inaccuracies are an attempt to mislead the court;

5) The extent of preferential treatment between classes of creditors;

6) The extent to which secured claims are modified;

7) The type of debt sought to be discharged, and whether any such debt is nondischargeable in Chapter 7;

8) The existence of special circumstances such as inordinate medical expenses;

9) The frequency with which the debtor has sought relief under the Bankruptcy code;

10) The motivation and sincerity of the debtor in seeking Chapter 13 relief; and

11) The burden which the plan's administration would place upon the trustee.

In re Warren, 89 B.R. 87, 93 (B.A.P. 9th Cir. 1988) (quoting *In re Brock*, 47 B.R. 167, 169 (Bankr. S.D. Cal. 1985) (emphasis added).

Creditor alleges that the inconsistencies between Debtor's bankruptcy filings and examination testimony demonstrate lack of good faith. Lack of good faith also exists where Debtor's proposed plan purports to pay Croswhite but no other creditors. Creditor argues that creditor Croswhite has an under-secured claim as the proof of claim claims $92,000 are owed and secured by Debtor's business assets, which in total are valued at less than $24,000.

Debtor's Opposition

Debtor filed a Response on December 18, 2020. Dckt. 59. Debtor asserts that it is not bad faith for Debtor to affirm the contract between Debtor and creditor Croswhite. Debtor asserts that there is now a stipulation between Debtor and Croswhite (with the Trustee's approval) affirming the executory contract as a cash collateral agreement to provide the Trustee with the proceeds from the business under the Chapter 13 plan. Debtor further argues that Creditor's claim is unsecured as it is based on a judgment obtained by Creditor through default. Debtor states that an agreement between Debtor and Creditor should be arranged in order to address Creditor's claim.

Debtor asserts that Debtor did not attempt to hide financial information but that Debtor's accountant in preparing the schedules discounted the amount paid to Croswhite anticipating approval by the Trustee. Debtor adds Debtor has no reason to hide income since it does not affect whether the plan is approved so long as Debtor could pay for the plan. Debtor then argues that now that executory contract has been affirmed and the stipulation approved by the Trustee, Debtor's schedules are accurate and consistent with Debtor's examination responses.

Debtor requests that the hearing on the instant objection be continued until after the adversary

proceeding filed by Creditor against Debtor is resolved.

Creditor's Response

Creditor filed a Sur-Reply on December 30, 2020. Dckt. 61. Creditor states that Debtor's Response fails to support the assertions made regarding Croswhite and that such assertions contradict Debtor's schedules. Creditor restates that Debtor's schedules do not list any secured creditors or mention accounts receivable.

Creditor contends that Debtor's assertions regarding the assumption of an executory contract are false as a matter of law because Debtor has not obtained court approval of any assumption. Creditor adds that Croswhite alleging a secured claim does not make the contract an executory contract and that Debtor seems to be conflating holding a security interest with ownership. Creditor also argues that the accounts receivable are not property of creditor but property of the estate.

Stipulation with Croswhite

On January 4, 2021, a Motion to Approve a Stipulation for Use of Cash Collateral and to Assume Executory Contract pursuant to 11 U.S.C. § 363, and § 549, and § 365, and Local Bankruptcy Rule 4001-1, and Local Bankruptcy Rule 9014-1, was filed by counsel for Croswhite. Dckt. 63. The Motion to Approve Use of Cash Collateral and the Motion to Assume Executory Contract is set for hearing on February 2, 2021.

The court first notes Federal Rule of Civil Procedure 18 allowing for the combining of multiple claims into one action that is incorporated into Federal Rule of Bankruptcy Procedure 7018 is not incorporated into law and motion contested matter practice by Federal Rule of Bankruptcy Procedure 9014. Movant Croswhite unilaterally made the Rule 18 provisions applicable for the relief that Movant Croswhite seeks to obtain from the court. Federal Rules of Bankruptcy Procedure 4001 (stipulation to use cash collateral) and 6006 do not provide for the combining of the two different reliefs into one motion. Though the court may make Rule 7018 and Rule 18 applicable in contested matters as provided in Federal Rule of Bankruptcy Procedure 9014(c), such was not requested by Movant Croswhite.

The grounds stated with particularity seeking an order approving the Stipulation to Use Cash Collateral and an Order for Assumption of the executory contract in the Motion (Dckt. 63) are:

A. Debtor will assume an executory agreement (not identified the nature of the executory agreement);

B. Debtor will pay Movant Croswhite $2,945.10 a month;

C. Debtor will retain "cash collateral proceeds" to pay his reasonable and necessary living and business expenses; and

D. Debtor will pay some unidentified disposable income from Debtor's business, Precision Pump & Water Works, to the Chapter 13 Trustee pursuant to a proposed plan.

No other grounds are stated identifying the multi-relief requested or the grounds upon which such multi-

relief is based.

In the Points and Authorities filed by Movant Croswhite, some additional information (some might say "grounds") appear. Dckt. 65. These include:

i. Movant Croswhite sold Precision Pump to Debtor on June 30, 2016, pursuant to an Asset Purchase Agreement.

ii. Movant Croswhite was given a promissory note for a portion of the purchase price, which is secured by the Debtor's accounts receivables and other assets subject to the purchase agreement.

iii. The Stipulation applies only to the pre-petition collateral to which Movant Croswhite can assert a lien.

iv. The "executory contract" is asserted to be Debtor's obligations to make payments on the promissory note. Additionally, as part of the sale Movant Croswhite has some non-competition obligation for five years from the execution of the purchase agreement, which noncompetition agreement expires on June 30, 2021 (approximately five months from the hearing on the Croswhite Motion).

The secured claim filed by Croswhite is for $92,091.55, and is asserted to be secured in its entirety. The assets securing the claim are generally described as "Precision Pump business assets." Proof of Claim 2-1, ¶ 9.

On Schedule A/B Debtor states under penalty of perjury that the business assets, consisting of tools, spare pump, and customer list as of the filing of this case had a combined value $2,700. Dckt. 12 at 9. This is approximately 2.9% of the $92,091.55 claim of Croswhite.

Debtor also lists three bank accounts on Schedule A/B, with balances totaling $9,250. *Id*. at 5. It is not clear what portion of this may be claimed as cash collateral by Croswhite.

On Schedule D Debtor states under penalty of perjury that he has no creditors who have secured claims. Dckt. 14.

Croswhite is listed as a creditor having a general unsecured claim of $103,481 on Schedule E/F. Dckt. 15.

On Schedule G Debtor lists having an "executory contract" for the purchase of business with creditor Croswhite. Dckt. 16.

On Schedule I Debtor states under penalty of perjury having "wage" income of $2,778 from being self employed. Dckt. 18.

On Schedule J Debtor states under penalty of perjury having reasonable and necessary expenses of $2,580 a month, leaving only $196 a month in net income. Dckt. 19. Debtor shows no expenses for self-employment taxes or income taxes. *Id.*, at 2.

While having only $2,778 in monthly wage income, on the Statement of Financial Affairs Debtor states under perjury of having gross business income of $182,269 in 2020 year to date, $242,923 in 2019, and $267,567 in 2018. Dckt. 22, Question 4.

On November 6, 2020, Debtor filed an Amended Schedule J, in which he states having $2,663 of net monthly income. Dckt. 37. This is based on Debtor stating that the income from line 12 on Schedule I is $5,243 a month. No amended Schedule I has been filed showing such increased monthly income.

DECISION

As discussed above, it appears that Debtor is pursuing a cash collateral Stipulation that is grossly inconsistent with the value of the collateral securing the Creditor Croswhite's claim. Additionally, Debtor seeks to reaffirm an executory contract with only five months on it at the cost of $2,945 a month. The proposed Stipulation is to be in effect only until March 31, 2021 - two months after the hearing date. The Stipulation is given retroactive effect, requiring the Debtor to have made monthly payments of $2,945 to Croswhite in November 2020, December 2020, January 2021, and February 2021 (the payment required to be made by the first of the month, which is prior to the February 2021 hearing. Thus, the Stipulation seeks to require $11,780 in "adequate protection payments" which had not been authorized by the court. (This $11,780 appears to exceed the value of Croswhite's collateral, at least as stated under penalty of perjury by Debtor.)

Stipulation regarding Cash Collateral and Assumption of Executory Contract

The court denied Creditor Croswhite's Motion to Approve Stipulation on February 2, 2021.

February 2, 2021 Hearing

On the face of this Chapter 13 Plan, Debtor will make monthly plan payments of $500, plus the additional $2,945.10 that he sought to obligate himself to by a cash collateral stipulation and assumption of purchase agreement to Creditor Croswhite. The $500 a month payment is to pay the required 10% Trustee fees and a 10% dividend to $100,000 of unsecured claims. The Plan term is 36 months.

In Debtor's Amended Schedule J Debtor purports to have $2,663.00 in monthly net income (having without explanation doubling his monthly income, without making any provision for income or self employment taxes to $5,243). But even with that, he cannot afford to make the $2,945.10 payment he proposes to Creditor Croswhite and $500 into the Plan.

At the hearing, xxxxxxxx

The proposed Chapter 13 Plan does not comply with 11 U.S.C. § 1322, § 1325; and 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, and orally on the record.

The Objection to Confirmation filed by James D. Price and Sharee E. Price, creditors, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

FINAL RULINGS

15.	**20-25327-E-13** **DPC-1**	**ROGER/BRANDY HAYES** **Mikalah Liviakis**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **1-13-21 [20]**

Final Ruling: No appearance at the February 2, 2021 hearing is required.

Local Rule 9014-1(f)(2) Objection—No 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 January 13, 2021. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

The court having reviewed the Pleadings, the court having granted the Motion to Value the Secured Claim identified in the Objection and the grounds having been stated as "conditional" and made pending resolution of the Motion to Value, the court has determined that oral argument will not be of assistance in the court ruling on this Objection.

The Objection to Confirmation of Plan is overruled.

The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that Trustee objects to confirmation pending hearing of Debtor's Motion to Value Collateral.

DISCUSSION

On January 7, 2021, Debtor filed a Motion to Value Collateral the secured claim of Credit Acceptance Corporation, Dckt 14. The motion was heard and granted on January 26, 2021. The court having valued the collateral at the amount sought by Debtor, this objection is resolved in favor of the Debtor.

Trustee having no other objection, the Plan complies with 11 U.S.C. §§ 1322 and 1325(a). The Objection is overruled, and the Plan is confirmed.

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

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

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

IT IS ORDERED that the Objection to Confirmation of the Plan is overruled, and Roger/Brandy Hayes ("Debtor") Chapter 13 Plan filed on November 11, 2020, is confirmed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

16. 20-25368-E-13 DPC-1 — ERIN ANDERSON — Julius Cherry — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK — 1-13-21 [21]

Final Ruling: No appearance at the February 2, 2021 hearing is required.

Local Rule 9014-1(f)(2) Objection— No 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 January 13, 2021. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

Upon review of the pleadings filed, the Trustee's Objection being conditionally based on the resolution of the Motion to Value the Secured Claim of Ally Bank, and the court having granted Debtor's Motion to Value by filing ruling for the February 2, 2021 Calendar; the court determines that oral argument will not be of assistance in ruling on this Objection.,

The Objection to Confirmation of Plan is overruled.

The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that Trustee objects to confirmation pending hearing of Debtor's Motion to Value Collateral.

DISCUSSION

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of Ally Bank. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

On December 28, 2020, Debtor filed a Motion to Value the Secured Claim of Ally Bank, Dckt. 14. The Motion was set for hearing on the same date and time as the instant Objection. The court granted the Motion valuing the secured claim at $11,500.00, which is provided for in the proposed Chapter 13 Plan.

Debtor having filed and the court having granted the Motion to Value Ally Bank's claim, this objection is overruled.

Trustee having no other objection, the Plan complies with 11 U.S.C. §§ 1322 and 1325(a). The Objection is overruled, and the Plan is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is overruled, and Erin Anderson ("Debtor") Chapter 13 Plan filed on November 30, 2020, is confirmed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.