

UNITED STATES BANKRUPTCY COURT  
Eastern District of California

**Honorable Ronald H. Sargis**  
Chief Bankruptcy Judge  
Sacramento, California

**Notice**

**The court has reorganized the cases, placing all of the Final Rulings in the second part of these Posted Rulings, with the Final Rulings beginning with Item 22.**

**The court has also reorganized the items for which the tentative rulings are issued, Items 1–21, attempting to first address the items in which short argument is anticipated.**

**April 24, 2018, at 3:00 p.m.**

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1.	<a href="#"><u>17-27692-E-13</u></a>	<b>ELIZABETH MANZO</b>	<b>MOTION TO SET ASIDE</b>
	<b>PLC-1</b>	<b>Peter Cianchetta</b>	<b>3-27-18 <a href="#"><u>[48]</u></a></b>

**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.

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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, parties requesting special notice, and Office of the United States Trustee on March 27, 2018. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Avoid Transfer 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.

<b>The Motion to Avoid Transfer is denied without prejudice.</b>
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Elizabeth Manzo (“Debtor”) moves for the court to avoid transfers of real property that allegedly occurred on April 5, 2016, pursuant to 11 U.S.C. § 544 and Federal Rule of Bankruptcy Procedure 7001(2).

Debtor argues that Miguel Manzo (relationship to Debtor undisclosed) borrowed \$100,000.00 from Esteban Cardiel (“Creditor”) on March 14, 2013. Debtor somehow argues that Creditor obtained a default judgment in state court against Miguel Manzo and against Louis Manzo, Debtor’s husband. According to Debtor, Creditor has been attempting to collect against Debtor’s community property because of a clause in a document creating a trust for Debtor that reads:

“The parties each acknowledge that this is a transmutation of both Elizabeth Lopez Manzo and Trustees separate and/or community property interest in the above-described real property, commonly known as [addresses], into community property shared between Elizabeth Manzo and Luis Manzo (Husband) and Veronica Elizabeth Manzo (Daughter.”)

Motion, Dckt. 48 at 2–3. Debtor states that the instant motion has been filed to determine whether certain of Debtor’s real property was transmuted to community property and whether such a transmutation/transfer can be avoided.

## **CHAPTER 13 TRUSTEE’S RESPONSE**

David Cusick (“the Chapter 13 Trustee”) filed a Response on April 10, 2018. Dckt. 54. The Chapter 13 Trustee states that the type of declaratory relief sought in the Motion is only available through an adversary proceeding. He also notes that all of the creditors in this case have not been served.

Looking at the pleadings in this case, the Chapter 13 Trustee notes that Debtor uses “Louis” in the Motion, but the other documents in the case state “Luis,” which is enough of a problem that could prevent a motion from being resolved.

The Chapter 13 Trustee notes that the Motion refers to Debtor having severe, possibly permanent, memory problems following cancer treatment, but he believes that those allegations may not be sufficient without corroborating evidence. He also notes that there is a lack of a timeline of when properties were conveyed and when litigation occurred since Debtor acquired properties.

## **CREDITOR’S OPPOSITION**

Creditor filed an Opposition on April 10, 2018. Dckt. 56. Creditor argues that the requested relief is only appropriate by adversary proceeding, and no adversary proceeding has been filed. Creditor notes that Debtor’s husband was not served with the Motion, even though he arguably has a community property interest in five contested pieces of real property.

Substantively, Creditor argues that the grant deed between Debtor and her husband does not constitute a transmutation agreement that can be avoided in bankruptcy.

## DEBTOR'S REPLY

Debtor filed a Reply on April 17, 2018. Dckt. 59. Debtor argues that she is willing to file an adversary proceeding but should not have to because the court has ruled on motions like this before, such as motions to value claim that are adversarial. Debtor also states that she is willing to serve the remaining creditors if it is necessary.

Debtor alleges that the distinction between Louis/Luis is a scrivener's error, but Debtor does not state which name is correct. Debtor states that her declaration discusses her failing memory, but she states that she is willing to supplement her declaration, and she points to the Memorandum of Points and Authorities for a timeline of events.

Responding to Creditor's substantive grounds, Debtor argues that the California Civil Code allows for corrections in the case of mistake, which is what she alleges happened during her memory problems when she allegedly transmuted property.

## RULING

Responding first to Debtor's point in the Reply that the court does not require adversary proceedings for motions like this, Debtor is incorrect. Despite the comparison, this Motion is not a motion to value a claim. Instead, Debtor has specifically directed the court to 11 U.S.C. § 544 and Federal Rule of Bankruptcy Procedure 7001(2), which governs adversary proceedings. The court is unsure why Debtor would allege that the requested relief is appropriate by a motion when also citing the court to explicit provisions that require an adversary proceeding to be filed for the type of declaratory relief requested.

The court does not even reach the substantive disagreement between the parties because of the glaring procedural defect with the Motion. To the extent that the parties want to argue whether property was actually transmuted by a deed, it appears that the parties belong in state court. Debtor even alludes to that possibility by stating that Debtor's "mistake would be set aside in a family law court." Dckt. 59 at 2:18.

Declaratory relief is an equitable remedy distinctive in that it allows adjudication of rights and obligations on disputes regardless of whether claims for damages or injunction have arisen. *See* Declaratory Relief Act, 28 U.S.C. § 2201. FN.1. "In effect, it brings to the present a litigable controversy, which otherwise might only be tried in the future." *Societe de Conditionnement v. Hunter Eng. Co., Inc.*, 655 F.2d 938, 943 (9th Cir. 1981). The party seeking declaratory relief must show (1) an actual controversy and (2) a matter within federal court subject matter jurisdiction. *Calderon v. Ashmus*, 523 U.S. 740, 745 (1998). There is an implicit requirement that the actual controversy relate to a claim upon which relief can be granted. *Earnest v. Lowentritt*, 690 F.2d 1198, 1203 (5th Cir. 1982).

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FN.1. 28 U.S.C. §2201,

§ 2201. Creation of remedy

(a) In a case of actual controversy within its jurisdiction, except with respect to Federal taxes other than actions brought under section 7428 of the Internal Revenue

Code of 1986, a proceeding under section 505 or 1146 of title 11, or in any civil action involving an antidumping or countervailing duty proceeding regarding a class or kind of merchandise of a free trade area country (as defined in section 516A(f)(10) of the Tariff Act of 1930), as determined by the administering authority, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

(b) For limitations on actions brought with respect to drug patents see section 505 or 512 of the Federal Food, Drug, and Cosmetic Act, or section 351 of the Public Health Service Act.

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The court may only grant declaratory relief when there is an actual controversy within its jurisdiction. *Am. States Ins. Co. v. Kearns*, 15 F.3d 142, 143 (9th Cir. 1994). The controversy must be definite and concrete. *Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227, 240–41 (1937). However, it is a controversy in which the litigation may not yet require the award of damages. *Id.*

As discussed in Moore’s Federal Practice, Vol. 12, § 57.04[3] (emphasis added):

“Traditionally, courts were permitted to act only when a party became entitled to coercive relief in the form of a judgment for damages or injunctive relief. However, declaratory relief permits an early adjudication of the rights and legal remedies involved in a dispute, regardless of whether claims for damages or injunctive relief have arisen or would otherwise need to be tried in the future. This remedy permits parties to minimize the accrual of avoidable losses and damages, and affords a party threatened with a lawsuit an opportunity to seek an adjudication without waiting for the opposition to institute proceedings. Stated differently, declaratory judgment relief creates means by which rights and obligations may be adjudicated in cases involving an actual controversy that has not reached a stage at which either party may seek a coercive remedy or in which a party entitled to a coercive remedy fails to sue. However, **declaratory relief is inappropriate to adjudicate past conduct, such as when the damages have already accrued.** Stated differently, a **declaratory judgment is a form of relief, based on completed or threatened actions, that operates to adjust the rights of the parties when the award of a prospective coercive judgment is inappropriate for any number of reasons.**”

A request for declaratory relief must be sought as part of an adversary proceeding, not as part of a contested matter as attempted here. FED. R. BANKR. P. 9014. The Motion is denied without prejudice.

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

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

The Motion to Avoid Transfer filed by Elizabeth Manzo (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is denied without prejudice.

2. [17-28206-E-13](#)      **EDWARD/JANET CASARINO**      **MOTION TO CONFIRM PLAN**  
**BLG-1**                      **Chad Johnson**                      **3-21-18 [50]**

**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.

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

Sufficient Notice Not Provided. Debtor has not filed a Proof of Service with the Motion and supporting pleadings that were filed on March 21, 2018. If service occurred on the same day, the court’s calculation is that 34 days’ notice would have been provided. 42 days’ notice is required. FED. R. BANKR. P. 2002(b); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended Plan has not been set properly 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).

<p><b>The Motion to Confirm the Amended Plan is denied without prejudice.</b></p>
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Edward Casarino and Janet Casarino (“Debtor”) did not file a Proof of Service with the Motion. Local Bankruptcy Rule 9014-1(f)(1) requires a minimum of forty-two days’ service. Therefore, the Motion is denied without prejudice.

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

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

The Motion to Confirm the Amended Plan filed by Edward Casarino and Janet Casarino (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is denied without prejudice.

**THE COURT HAS PREPARED THE FOLLOWING ALTERNATIVE RULING IF DEBTOR PROVIDES SUFFICIENT SERVICE OF THE MOTION**

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Debtor has provided evidence in support of confirmation. David Cusick (“the Chapter 13 Trustee”) filed a Non-Opposition on April 6, 2018. Dckt. 56. 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 Edward Casarino and Janet Casarino (“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 March 21, 2018, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick (“the Chapter 13 Trustee”) for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on April 10, 2018. By the court’s calculation, 14 days’ notice was provided. 14 days’ notice is required.

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

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**The Motion to Value Collateral and Secured Claim of Chrysler Capital (“Creditor”) is granted, and Creditor’s secured claim is determined to have a value of \$30,050.00.**

The Motion filed by Charles Benson and Christine Benson (“Debtor”) to value the secured claim of Chrysler Capital (“Creditor”) is accompanied by the declaration of Clancy Callahan, an office manager for Debtor’s counsel. The Motion alleges that Debtor is the owner of a 2015 Ram 2500 Crew Cab Pickup (“Vehicle”), which is also listed on Schedule B. Dckt. 22. Debtor seeks to value the Vehicle at a replacement value of \$30,050.00 as of the petition filing date.

#### **CHAPTER 13 TRUSTEE’S RESPONSE**

David Cusick (“the Chapter 13 Trustee”) filed a Response on April 18, 2018. Dckt. 36. He notes that Creditor filed a Proof of Claim on April 3, 2018, with a total amount of \$55,636.43 and \$30,050.00 as a secured claim.

## DISCUSSION

Creditor filed Proof of Claim No. 3-1 on April 3, 2018. Creditor asserts that its total claim is \$55,636.43 and that it is a secured claim in the amount of \$30,050.00. Creditor and Debtor agree as to the value of the Vehicle and as to the amount of the total claim.

The lien on the Vehicle's title secures a purchase-money loan incurred on August 29, 2015, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$55,636.43. 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 \$30,050.00, 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 Charles Benson and Christine Benson ("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 Chrysler Capital ("Creditor") secured by an asset described as a 2015 Ram 2500 Crew Cab Pickup ("Vehicle") is determined to be a secured claim in the amount of \$30,050.00, 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 \$30,050.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.



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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on March 17, 2018. By the court's calculation, 38 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 BMO Harris Bank NA ("Creditor") is granted, and Creditor's secured claim is determined to have a value of \$15,000.00.**

The Motion filed by Gerardo Reyes ("Debtor") to value the secured claim of BMO Harris Bank NA ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2010 International Pro-Star ("Property"). Debtor seeks to value the Property at a replacement value of \$15,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

#### CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on April 6, 2018. Dckt. 76. The Chapter 13 Trustee notes that the Motion's language is conflicting because the Property is defined as singular, but paragraphs 2 and 3 discuss it as plural.

He also notes that Creditor filed an amended claim on March 20, 2018, claiming \$18.90 at part 7, but part 9 lists a secured value of \$15,000.00 and an unsecured value of \$3,903.61. The Chapter 13 Trustee notes that the original claim filed on November 16, 2017, showed a total amount of \$18,903.61.

## DISCUSSION

Creditor filed amended Proof of Claim 1-3 on April 6, 2018. It shows that the claim is for \$18,903.61 and that it is secured by a title lien on the Property in the amount of \$15,000.00, with the remaining \$3,903.61 being treated as unsecured.

The lien on the Property secures a non-purchase-money loan to secure a debt owed to Creditor with a balance of approximately \$18,903.61. Therefore, Creditor's claim secured by a lien against the Property is under-collateralized. Creditor's secured claim is determined to be in the amount of \$15,000.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion to Value Collateral and Secured Claim filed by Gerardo Reyes ("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 BMO Harris Bank NA ("Creditor") secured by an asset described as 2010 International Pro-Star ("Property") is determined to be a secured claim in the amount of \$15,000.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$15,000.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

5. [18-20105](#)-E-13 SANDRA RANDALL  
DPC-1 Mary Ellen Terranella

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY DAVID P.  
CUSICK  
2-14-18 [\[15\]](#)

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

**Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the 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).**

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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 February 14, 2018. By the court's calculation, 41 days' notice was provided. 14 days' notice is required.

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

<b>The Objection to Confirmation of Plan is sustained.</b>
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David Cusick ("the Chapter 13 Trustee") opposes confirmation of the Plan on the basis that:

- A. Sandra Randall ("Debtor") failed to appear at the Meeting of Creditors, and
- B. The Plan calls for paying attorney's fees of \$3,000.00 in Section 3.05, but the Plan does not propose a monthly dividend for administrative expenses.

#### **MARCH 27, 2018 HEARING**

At the hearing, the court continued the matter to 3:00 p.m. on April 24, 2018. Dckt. 24.

## CHAPTER 13 TRUSTEE'S STATUS AND SUPPLEMENTAL PLEADING

The Chapter 13 Trustee filed a Supplement on April 9, 2018. Dckt. 26. The Chapter 13 Trustee states that Debtor failed to attend the continued Meeting of Creditors on March 1, 2018, and that Debtor is now delinquent \$398.00, which represents two plan payments.

### RULING

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

Additionally, Section 3.05 of the Plan calls for paying attorney's fees of \$3,000.00 through the Plan, but Section 3.06 proposes a monthly dividend of \$0.00. That does not compute mathematically.

The Chapter 13 Trustee asserts that Debtor is \$398.00 delinquent in plan payments, which represents multiple months of the \$199.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

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

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

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

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

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

**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.

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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's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 2, 2018. By the court's calculation, 53 days' notice was provided. 42 days' notice is required. FED. R. BANKR. P. 2002(b); LOCAL BANKR. R. 3015-1(d)(1).

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

**The Motion to Confirm the Amended Plan is denied.**

Craig Mason ("Debtor") seeks confirmation of the Amended Plan because he needed to prepare and deliver 2016 tax documents to David Cusick ("the Chapter 13 Trustee"). Dckt. 75. The Amended Plan proposes payments of \$5,750.00 for sixty months, with a 0.00% dividend for unsecured claims. Dckt. 77. 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 filed an Opposition on April 9, 2018. Dckt. 91. The Chapter 13 Trustee argues that Debtor has failed to file all post-petition tax returns. Filing of tax returns is required. 11 U.S.C. § 1308. Failure to file a tax return is grounds to deny confirmation. 11 U.S.C. § 1325(a)(1).

The Chapter 13 Trustee also objects because the Amended Plan relies upon the court sustaining Debtor's objection to claim of CadleRock III, LLC, and without it being sustained, there will not be sufficient plan funds. Also, if the objection is sustained, the Chapter 13 Trustee notes that Debtor has not explained how it would impact his business income and operations to fund the Amended Plan.

A Notice of Mortgage Payment Change was filed on March 5, 2018. The Chapter 13 Trustee states that the plan payment must increase to \$5,931.87 to fund, and he believes that the increase is possible because of a moving calculation on Schedule I for average business income that had been skewed low because of no income being reported for December 2016.

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

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

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

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

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

7.	<a href="#"><u>17-23911</u></a> -E-13 DPC-1	<b>CRAIG MASON</b> <b>Lucas Garcia</b>	<b>CONTINUED MOTION TO DISMISS</b> <b>CASE</b> <b>12-4-17 <a href="#"><u>[50]</u></a></b>
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**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on December 4, 2017. By the court’s calculation, 44 days’ notice was provided. 28 days’ notice is required.

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

<b>The Motion to Dismiss is granted, and the case is dismissed.</b>
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David Cusick's ("the Chapter 13 Trustee") Motion argues that Craig Mason ("Debtor") did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on October 17, 2017. A review of the docket shows that Debtor has filed a new plan or a motion to confirm a plan.

### **FILING OF AMENDED PLAN**

Debtor filed an Amended Plan and Motion to Confirm on December 8, 2017. Dckts. 54, 56. The court has reviewed the Motion to Confirm the Amended Plan and the Declaration in support filed by Debtor. Dckts. 54, 57. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon Debtor's personal knowledge. FED. R. EVID. 601, 602.

### **CHAPTER 13 TRUSTEE'S RESPONSE**

The Chapter 13 Trustee filed a Response on January 9, 2018. Dckt. 66. The Chapter 13 Trustee notes that an Amended Plan has been filed, and he informs the court that he has filed opposition to its confirmation.

### **JANUARY 17, 2018 HEARING**

At the hearing, the court continued this matter to 10:00 a.m. on March 21, 2018, to allow time for Debtor to propose an amended plan on the correct plan form. Dckt. 68.

### **DEBTOR'S SUPPLEMENTAL REPLY**

Debtor filed a Supplemental Reply on March 7, 2018. Dckt. 84. Debtor argues that an Amended Plan has been filed and set for a confirmation hearing on April 24, 2018, that will resolve the grounds raised in the Motion to Dismiss.

### **CHAPTER 13 TRUSTEE'S REPLY**

The Chapter 13 Trustee filed a Reply on March 9, 2018. Dckt. 86. The Chapter 13 Trustee notes that he intends to object to the proposed amended plan, and he requests that this Motion either be granted or that it be continued to April 24, 2018, to be heard in conjunction with the motion to confirm. He notes that Debtor is current with plan payments.

### **MARCH 21, 2018 HEARING**

At the hearing, the court continued the matter to 3:00 p.m. on April 24, 2018, to be heard in conjunction with Debtor's motion to confirm an amended plan. Dckt. 89, 90.

## **RULING**

The court has denied confirmation of Debtor's amended plan. Cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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

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

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

**IT IS ORDERED** that the Motion to Dismiss is granted, and the case is dismissed.



**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).**

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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 March 23, 2018. By the court's calculation, 32 days' notice was provided. 14 days' notice is required.

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

<p><b>The Objection to Confirmation of Plan is sustained.</b></p>
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David Cusick ("the Chapter 13 Trustee") opposes confirmation of the Plan on the basis that:

- A. Ozniesha Williams's ("Debtor") proposed Plan will take 432 months to complete;
- B. Debtor's proposed Plan fails the Chapter 7 Liquidation Analysis; and
- C. Debtor fails to propose to pay all disposable income into the Plan.

The Chapter 13 Trustee's objections are well-taken. Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Chapter 13 Trustee, the Plan will complete in 432 months due to Debtor's estimate of her priority claims totaling \$376,000.00. (It appears that this is the amount of the Schedule D secured claims, there being \$0.00 of priority unsecured claims listed on Schedule E/F.) The Plan would take sixty-one months even only paying

the Class 1 and attorney fees. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor's plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). The Chapter 13 Trustee states that Debtor's non-exempt equity totals \$47,136.00 while Debtor proposes a zero percent dividend to unsecured creditors. According to Schedule E/F, Debtor's unsecured claims total \$2,900.00, thus it appears the Plan should be paying a one hundred percent dividend to unsecured claims to satisfy the Liquidation Analysis.

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

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

Debtor proposes \$3,340.00 in monthly payments for sixty months at zero percent, which is below the median income. This fails to propose the payment of all disposable income into the Plan because Debtor fails to consider tax refunds in calculating the disposable income. At the Meeting of Creditors on March 22, 2018, Debtor admitted to expecting about \$7,000.00 for the 2017 tax refund but has failed to use that projection in the disposable income calculation. Under 11 U.S.C. § 1325(b), that is not Debtor's best effort. Thus, the court may not approve the Plan.

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

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

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

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

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

**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.

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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 March 7, 2018. By the court’s calculation, 48 days’ notice was provided. 42 days’ notice is required. FED. R. BANKR. P. 2002(b); LOCAL BANKR. R. 3015-1(d)(1).

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

<p><b>The Motion to Confirm the Amended Plan is granted.</b></p>
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Brian Moran and Sonja Moran (“Debtor”) seek confirmation of the Amended Plan to address problems with prior proposals, such as updating the schedules to show employment and to move a claim from Class 1 to Class 4. Dckt. 29. The Amended Plan calls for plan payments of \$1,245.00 as well as \$1,160.00 paid each month outside of the plan for student loans, with a dividend to unsecured claims of 49%. Dckt. 19. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

#### **CHAPTER 13 TRUSTEE’S RESPONSE**

David Cusick (“the Chapter 13 Trustee”) filed a Response on April 9, 2018. Dckt. 45. The Chapter 13 Trustee argues that the Plan is based upon a plan form that is no longer effective now that the court has adopted a new plan form as of December 1, 2017. The Plan is based on a prior plan form, which is a violation of Federal Rule of Bankruptcy Procedure 3015.1 and General Order 17-03.

The Chapter 13 Trustee states that he is not opposed to the terms of the Amended Plan, though.

## DEBTOR'S RESPONSE

Debtor filed a Response on April 9, 2018. Dckt. 48. FN.1. Debtor states that the correct plan form has now been submitted and requests that the court confirm it.

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FN.1. Debtor filed the Response, Exhibits, and Proof of Service in this matter as one document. That is not the practice in the Bankruptcy Court. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." LOCAL BANKR. R. 9004-2(c)(1). Counsel is reminded of the court's expectation that documents filed with this court comply as required by Local Bankruptcy Rule 9004-1(a). Failure to comply is cause to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

These document filing rules exist for a very practical reason. Operating in a near paperless environment, the motion, points and authorities, declarations, exhibits, requests for judicial notice, and other pleadings create an unworkable electronic document for the court (some running hundreds of pages). It is not for the court to provide secretarial services to attorneys and separate an omnibus electronic document into separate electronic documents that can then be used by the court.

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## CHAPTER 13 TRUSTEE'S RESPONSE

The Chapter 13 Trustee filed a Response on April 11, 2018. Dckt. 50. The Chapter 13 Trustee notes that correct plan form is attached to Debtor's Response, but he notes that service was only on Debtor and the Chapter 13 Trustee. The Chapter 13 Trustee does not oppose confirmation, but he notes certain changes in the Plan:

- A. Section 3.06 changes the administrative dividend from \$333.33 to \$0.00.
- B. Section 3.08 changes the Class 2 dividends to Carmax and JP Morgan Chase Bank, as follows
  - 1. Carmax is now listed as receiving a \$464.99 dividend, but had been listed as receiving \$350.04 for six months, \$498.27 for twenty-eight months, and \$223.09 for one month; and
  - 2. JP Morgan Chase Bank is now listed as receiving a \$580.68 dividend, but had been listed as receiving \$437.13 for six months, \$622.24 for twenty-eight months, and \$278.59 for one month.

The Chapter 13 Trustee calculates that the Plan is feasible, but not all creditors have been served it.

## DEBTOR'S RESPONSE

Debtor filed a Response on April 19, 2018. Dckt. 52. Debtor asserts that an amended plan is attached on the correct form and that it contains no changes from the plan filed on January 6, 2018, except as to form.

## RULING

The certificates of service attached with Debtor's first and second Responses (containing the updated plan) state that service was not performed on all of the same parties who received notice of the Amended Plan presented as part of this Motion initially. The updated plan form contains some language different than the one submitted by Debtor. Though such changes exist, they work to "smooth out" the payments, providing for equal monthly payments in substantially the same or larger amounts. While close, the call tips in favor of Debtor.

Of concern to the court is the "testimony" given by Debtor, and each of them, under penalty of perjury in their Declaration. Dckt. 29. Debtor's Declaration begins with paragraph 6. *Id.* at 1. It appears that this was cut and pasted from some other document.

The "testimony" of Debtor, and each of them, is written in the third-person, as if it were intended as argument written by an advocate for Debtor. Though the information appears to be accurate, its credibility is impaired due to the third-party style. It is as if Debtor is a mere puppet, signing whatever is put in front of them. The better, and more credible, practice is for the declaration to be written as first-party, personal, non-lawyer, real person testimony. When the court sees what appear to be arguments from a points and authorities cut and pasted into a "declaration," the court is inclined to conclude that the witness has no belief in, or knowledge of, the statements and will sign whatever is presented based on the attorney's promise—"SIGN THIS, AND YOU WIN."

Again, this is a close call, but the court will err on the side of Debtor in confirming this Chapter 13 Plan that provides for significant payments to creditors, including those holding general unsecured claims. Debtor and counsel have also properly navigated the Additional Provision outside the plan for special direct payment treatment for nondischargeable student loans.

Debtor has provided evidence in support of confirmation. Debtor filed an updated version of the Amended Plan on April 19, 2018, that matches the terms proposed as part of the original amended plan filed on January 6, 2018. No creditor filed any opposition to the proposed plan terms, and the Chapter 13 Trustee has indicated that he does not oppose.

The court notes that Pingora Loan Servicing, LLC filed Proof of Claim 16-1 on April 2, 2018. The claim is asserted to be secured by Debtor's real property commonly known as 2839 Monte Vista Street, West Sacramento, California, in the total amount of \$359,948.67 with \$469.22 in default. Monthly payments are asserted to be \$2,509.13.

The attached documents to Proof of Claim 16-1 show that Pingora is servicing the loan originally lent by American Pacific Mortgage Corporation ("Creditor"). Creditor's claim is provided for in Class 4

of the Amended Plan with \$2,647.96 listed as the monthly contract installment, which is \$138.83 higher than listed in Creditor's claim. While it appears that Creditor's claim should be listed in Class 1 of the Amended Plan, the court calculates that Debtor's proposal in Class 4 will cure the default in four months.

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 Brian Moran and Sonja Moran ("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 April 19, 2018 (Dckt. 52), is confirmed.

Debtor's counsel shall file the Amended Plan (Exhibit, Dckt. 52) as a separate document. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, which identifies the Amended Plan filed by the Docket Number for the separately filed Amended Plan, transmit the proposed order to David Cusick ("the Chapter 13 Trustee") for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

**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).**

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 March 7, 2018. By the court's calculation, 48 days' notice was provided. 14 days' notice is required.

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

Nissan Motor Acceptance Corporation (“Creditor”) holding a secured claim opposes confirmation of the Plan on the basis that the interest rate does not comply with *Till* and will not adequately provide for Creditor’s claim.

Creditor's objection is well-taken. Creditor objects to the confirmation of the Plan on the basis that the Plan calls for adjusting the interest rate on its loan with Debtor to 4.25%. Creditor's claim is secured by a 2016 Nissan Sentra. Creditor argues that this interest rate is outside the limits authorized by the Supreme Court in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). In *Till*, a plurality of the Court supported the "formula approach" for fixing post-petition interest rates. *Id.* Courts in this district have interpreted *Till* to require the use of the formula approach. *See In re Cachu*, 321 B.R. 716 (Bankr. E.D. Cal. 2005); *see also Bank of Montreal v. Official Comm. of Unsecured Creditors (In re American Homepatient, Inc.)*, 420 F.3d 559, 566 (6th Cir. 2005) (*Till* treated as a decision of the Court). Even before *Till*, the Ninth Circuit had a

preference for the formula approach. *See Cachu*, 321 B.R. at 719 (citing *In re Fowler*, 903 F.2d 694 (9th Cir. 1990)).

The court agrees with the court in *Cachu* that the correct valuation of the interest rate is the prime rate in effect at the commencement of this case plus a risk adjustment. Because the creditor has only identified risk factors common to every bankruptcy case, the court fixes the interest rate as the prime rate in effect at the commencement of the case, 4.50%, plus a 1.25% risk adjustment, for a 5.75% interest rate. The objection to confirmation of the Plan on this basis is sustained. *See* 11 U.S.C. § 1325(a)(5)(B)(ii).

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

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

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

The Objection to the Chapter 13 Plan filed by Nissan Motor Acceptance Corporation (“Creditor”) holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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



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

**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).**

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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 March 27, 2018. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

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

<b>The Objection to Confirmation of Plan is sustained.</b>
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David Cusick ("the Chapter 13 Trustee") opposes confirmation of the Plan on the basis that:

- A. Taujai Carey ("Debtor") is delinquent in Plan Payments;
- B. Debtor relies on a motion to value collateral but has failed to file the motion to value collateral; and
- C. The Plan may not be Debtor's best effort.

The Chapter 13 Trustee's objections are well-taken. The Chapter 13 Trustee asserts that Debtor is \$222.00 delinquent in plan payments, which represents one month of the \$222.00 plan payment. The Chapter 13 Trustee notes that Debtor has paid \$0.00 into the Plan. According to the Chapter 13 Trustee, the Plan in § 1.01 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).

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

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

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

Debtor is under the median income and proposes Plan Payments of \$222.00 for four months, then \$380.00 for fourteen months, then \$530.00 for thirty-four months with a zero percent dividend to unsecured creditors. It is unknown whether this is best effort under 11 U.S.C. § 1325(b) or whether Debtor will even be able to make Plan Payments under 11 U.S.C. § 1325(a)(6) because Debtor admitted at the First Meeting of Creditors, held March 22, 2018, that she had a new job that was not listed on Schedule I and that the income listed on Schedule I was not accurate.

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

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

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

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

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

**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).**

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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 March 5, 2018. By the court's calculation, 50 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 -----.

<p><b>The Objection to Confirmation of Plan is sustained.</b></p>
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Toyota Motor Credit Corporation, as servicing agent for Toyota Lease Trust, ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

- A. Anthony Salcedo's ("Debtor") plan misstates the monthly payment amount, and
- B. The Plan does not cure pre-petition arrears.

Creditor asserts that the Plan cannot be confirmed because it calls for \$673.00 in direct monthly payments when the amount owed is actually \$673.60. Creditor objects to a difference of \$0.60 per month, which over the course of the plan term totals \$36.00.

The mere \$0.60 monthly amount is not a valid ground for objecting to the Plan. The amounts listed in Creditor's Proof of Claim control what it will be paid in this case. The issue is whether the \$0.60

a month difference could be funded with the proposed plan payment. It appears that Creditor ADMITS that the plan would sufficiently fund its secured claim as set forth in its Proof of Claim.

Creditor further complains that the \$1,347.20 of the pre-petition arrearage it has stated in Proof of Claim No. 1 is not provided for in the Plan. Proof of Claim No. 1 states that Creditor has a secured claim in the amount of \$18,860.80. While filed as a “secured claim,” Creditor asserts in the Motion that is merely the “lessor” of the vehicle to Debtor, and it is Creditor who owns the vehicle, with Debtor merely having a possessory right to the vehicle—so long as the lease payments are made to Creditor.

Debtor concurs, listing Creditor in Section 4 of the Plan as having an unexpired lease for which Debtor will be making \$673.00 monthly payments for the post-petition monthly payments and \$0.00 for pre-petition arrearage. Given that Debtor is not providing for what appears to be a two-month pre-petition arrearage, Creditor’s Objection is sustained. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B).

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 notes that this is not Debtor’s first recent bankruptcy case. In the prior case, the court notes that Debtor became delinquent more than \$14,000.00 before the case was ultimately dismissed. Case No. 17-24940, Dckt. 16, 25. The court raises this point for Debtor to consider whether he is effectively exercising his rights through Chapter 13 cases or whether another chapter (or non-bankruptcy means) would be more useful.

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

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

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

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

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

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

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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 March 28, 2018. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

<b>The Objection to Confirmation of Plan is sustained.</b>
--

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

- A. Anthony Salcedo ("Debtor") is delinquent in Plan Payments; and
- B. Debtor failed to appear at the First Meeting of Creditors.

The Chapter 13 Trustee's objections are well-taken. The Chapter 13 Trustee asserts that Debtor is \$6,200.00 delinquent in plan payments, which represents one month of the \$6,200.00 plan payment. To date, Debtor has failed to pay anything into the Plan. 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).

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

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FN.1. Though the analysis not done by Creditor Toyota Motor Credit in its objection asserting that Debtor was shorting it \$0.60 per month on the post-petition payment, the court did conduct an analysis of the economics of the plan and whether such a \$0.60 shortfall was fatal to the Plan. That \$0.60 shortfall was not fatal.

However, Wells Fargo Bank, N.A. filed a claim for larger monthly amounts than provided for in the Plan. Additionally, the claims for the Internal Revenue Service and the Franchise Tax Board were filed for a total of \$176,604.50, with \$159,530.83 entitled to priority, but the Plan only provides for \$146,000.00 as priority. The Plan will not fund adequately to adjust for these other claims, on top of Creditor's \$0.60 per month understatement of post-petition monthly payment.

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

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

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

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

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

**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).**

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor (*pro se*) on March 26, 2018. By the court's calculation, 29 days' notice was provided. 14 days' notice is required.

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

<b>The Objection to Confirmation of Plan is sustained.</b>
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David Cusick ("the Chapter 13 Trustee") opposes confirmation of the Plan on the basis that:

- A. Linda McInnes ("Debtor") is delinquent in plan payments.
- B. Debtor filed the wrong Chapter 13 Plan form.
- C. Debtor's plan may not be feasible.
- D. Debtor filed a vehicle under Class 1, instead of Class 2 under the current Plan.
- E. Debtor's Plan may not be a best effort.
- F. Debtor failed to provide the case number for a previous bankruptcy filing.

- G. Debtor's Plan may not be filed in good faith because Debtor failed to list all assets and claims 100% exemption under California Code of Civil Procedure § 704.
- H. Debtor failed to provide pay advices.
- I. Debtor failed to provide 2016 tax return.

The Chapter 13 Trustee's objections are well-taken.

The Chapter 13 Trustee asserts that Debtor is \$100.00 delinquent in plan payments, which represents one month of the \$100.00 plan payment. Debtor has not made a plan payment as to date. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

The Chapter 13 Trustee argues that the Plan is based upon a plan form that is no longer effective now that the court has adopted a new plan form as of December 1, 2017. The Plan is based on a prior plan form, which is a violation of Federal Rule of Bankruptcy Procedure 3015.1 and General Order 17-03.

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). The Chapter 13 Trustee asserts that Debtor's plan pays \$100.00 for thirty-six months and proposes to pay \$19,590 to Kia Financial, and \$12,623.53 in priority claims are filed to date. The Chapter 13 Trustee has calculated that Plan payments must be no less than \$994.07 to pay claims as reported at 0% in thirty-six months or \$616.31 in sixty months. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

The Chapter 13 Trustee argues that the Plan does not comply with applicable law because Kia Finance is listed in Class 1, when it could be listed in Class 2. 11 U.S.C. § 1325(a)(1).

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

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

According to the Chapter 13 Trustee, Debtor is below median income, proposing a \$100 payment for thirty-six months. The Chapter 13 Trustee has determined Debtor will need additional monies to fund the Plan.

Debtor reported that she has a prior bankruptcy in July 2013 but failed to provide a case number for that bankruptcy. A review of other filings in this district shows Case No. 13-27508, filed on May 31, 2013.



Debtor's Plan may not be filed in good faith under 11 U.S.C. § 1325(a)(3). The Chapter 13 Trustee asserts that Debtor's Schedule A/B does not list any ownership in electronics, clothing, or jewelry. The Chapter 13 Trustee also finds that Debtor exempts her assets and vehicle under California Code of Civil Procedure § 704.060 at 100% of fair market value. The Chapter 13 Trustee cannot determine if Debtor's assets should be exempt or were accurately reported.

Debtor has not provided the Chapter 13 Trustee with employer payment advices for the sixty-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv). Also, the Chapter 13 Trustee argues that Debtor did not provide either a tax transcript or a federal income tax return with attachments for the 2016 pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A); 11 U.S.C. § 1325(a)(9); FED. R. BANKR. P. 4002(b)(3).

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

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

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

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

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

**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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on March 19, 2018. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(g) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

<p><b>The Motion to Confirm the Modified Plan is denied.</b></p>
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Ronald Grassi ("Debtor") seeks confirmation of the Modified Plan, but he does not present any reason why. Dckt. 100. The Motion makes reference to a First Amended Plan being filed and proposed in good faith. The Amended Plan was confirmed in this case on April 20, 2017. Dckt. 91. The confirmed Amended Plan requires plan payments of \$1,500.00 per month for the first five months, \$2,500.00 for thirty-five months, and then \$3,157.00 per month for the final twenty months. Amended Plan, Dckt. 56; Order Confirming (increasing the final twenty months' payments), Dckt. 91.

The "Modified" Plan filed on March 19, 2018, is actually titled "Amended Chapter 13 Plan." The Modified Plan calls for payments of \$2,028.00 for eighteen months, followed by payments of \$3,472.14 for forty-two months. Dckt. 101. The proposed "Modified" Plan was filed in March 2018—the nineteenth month of the Plan. It appears that the \$2,028.00 per month amount is the average of actual payments, reflecting a \$3,496 default in payments required under the confirmed Amended Plan. (The required payments totaling \$40,000 and the \$2,028.00 per month x eighteen months = \$36,360.)

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

## CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick (“the Chapter 13 Trustee”) filed an Opposition on April 10, 2018. Dckt. 105. The Chapter 13 Trustee questions Debtor’s ability to afford the increased plan payments. He notes that the current Schedules I & J show net income of \$2,505.76, but the proposed Modified Plan will increase payments to \$3,472.14. Debtor discloses that he has a court order for Marisela Guzman-Grassi to pay \$1,000.00 each month to the Chapter 13 plan, but the Chapter 13 Trustee notes that those funds are not included in Section 2.02 or in the additional provisions, and he states that regardless of the order, Debtor is responsible for making the plan payments.

Building off of his prior statements, the Chapter 13 Trustee notes that supplemental Schedules I & J have not been filed and that the current schedules are more than one year old, reflecting monthly net income of \$2,505.76.

The Chapter 13 Trustee also notes that there is a difference between the Plan and the order confirming. The order confirming states that general unsecured claims shall receive 2.0%, but the Plan does not include that language.

## DEBTOR’S RESPONSE

Debtor filed a Response on April 17, 2018. Dckt. 112. Debtor’s counsel argues that amended Schedules I & J have been filed and that he can afford the plan payments without contribution from a non-debtor. Debtor proposes adding a 2.00% dividend to unsecured claims to the Plan.

## RULING

At face value, Debtor new schedules do not appear to show that Debtor can afford the plan payments. Overall since the last-filed Schedules I & J, Debtor’s income has decreased, while his expenses have increased. *Compare* Dckt. 61, 62, *with* Dckt. 108, 109. A review of Amended Schedule I shows that Debtor has larger take-home pay primarily because he no longer has a MANDATORY payroll deduction for a retirement plan and an insurance deduction. *Compare* Dckt. 61, *with* Dckt. 108.

Debtor does not explain why he suddenly does not have those two deductions from his payroll. As to the plan payments, Debtor has not provided evidence that he will be able to afford the increased payments. 11 U.S.C. § 1325(a)(6). Debtor’s schedules do not support an increase.

Debtor’s latest Schedule I showing his new, post-petition income to support the modification of the plan states that it is both an “amended” Schedule I, dating back to the commencement of this case, and a supplemental Schedule I showing changes in income occurring only after February 9, 2017. Dckt. 108. It cannot be both. Debtor appears to have a “flexible” understanding of what it is to state accurate financial information.

On the Janus Duality-Amended/Supplemental Schedule I, Debtor lists having income of \$800.00 for Blue Shield “Commissions.” On Schedule I, Debtor does not state that he is working as an insurance

agent selling Blue Shield insurance policies. No such Blue Shield “Commissions” income was listed on original Schedule I. Dckt. 9 at 17–18.

Debtor also filed Janus Duality-Amended/Supplemental Schedule J, purporting to state Debtor’s expenses as of the commencement of this case and his “new,” “changed” expenses as of February 9, 2017. Dckt. 109. This February 2017 change was disclosed in the March 2018 filing, as it was for the Amended/Supplemental Schedule I.

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

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

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

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

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

**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.

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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 March 13, 2018. By the court's calculation, 42 days' notice was provided. 42 days' notice is required. FED. R. BANKR. P. 2002(b); LOCAL BANKR. R. 3015-1(d)(1).

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

**The Motion to Confirm the Amended Plan is granted.**

Gerardo Reyes ("Debtor") seeks confirmation of the Amended Plan because his wife refuses to include a debt on a truck in Class 2; so, Debtor will pay it outside of the Plan and then increase plan payments in the forty-seventh month when the loan is paid. Dckt. 66. The Amended Plan calls for payments of \$850.00 for the first forty-six months and then \$1,450.00 for the remaining months. Dckt. 64. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

#### CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on March 29, 2018. Dckt. 73. A review of Debtor's Plan shows that it relies on the court valuing the secured claim of BMO Harris Bank NA. The court granted that motion at the April 24, 2018 hearing.

The Chapter 13 Trustee notes that he does not object to how Debtor treats F.C.I. Lender Services, Inc., in the Plan. That creditor is listed in Class 2 of the Plan and filed a claim on December 11, 2017, indicating that the parties agreed to a claim of \$17,339.00 with interest of 4.00% over sixty months and payments of \$319.32. Proof of Claim 4-1.

Finally, the Chapter 13 Trustee objects to the proposed treatment of Bank of America Auto in Class 4. The Chapter 13 Trustee notes that Debtor admitted at the Meeting of Creditors that there are forty-five payments left, and so, the claim should be listed in Class 2 because it is not long-term. Additionally, Debtor has not listed the date that the debt was incurred, preventing the Chapter 13 Trustee from determining if it is eligible for cramdown. The Chapter 13 Trustee also states that it is not possible to determine from Schedules I & J whether the non-filing spouse is paying the loan.

## **DEBTOR'S RESPONSE**

Debtor filed a Response on April 5, 2018. Dckt. 79. Debtor notes that the pending motion to value is set for the same hearing date, and he concedes that the loan for the truck should be in Class 2. Debtor proposes the following additional provisions for the change:

7.1 For months November 23, 2017 through month April, 2018. The plan payment shall be \$850 per month.

For months May, 2018 through month 60 of the plan, the plan payment shall be \$1,355 per month.

7.2 Bank of America has a loan secured by a 2015 Chevrolet Silverado, Loan #650-10041119962 in the name of debtor's wife Silvia Quezada Rios. That loan shall be included in class 2(a) of the plan, drawing three percent per year interest. The payments made by the Trustee to Bank of America shall be as follows:

(1) Zero for months November, 2017 through May, 2018.

(2) The sum of \$520 for the month of June, 2018 through the end of the plan.

7.3 The reason the trustee shall not pay Bank of America until June, 2018 is that the debtor has made the payments up to May, 2018.

7.4 All of the disbursements made by trustee to date are authorized and ratified.

## **RULING**

Debtor has proposed additional provisions that call for the loan to Bank of America to be paid in Class 2 of the Plan. At the hearing, the Chapter 13 Trustee **agreed / did not agree** that the proposed changes satisfy his objection.

The Amended Plan complies 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 Gerardo Reyes (“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 March 13, 2018, as amended to provide for Bank of America Auto in Class 2, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick (“the Chapter 13 Trustee”) for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

17.	<a href="#"><u>18-20779</u></a> -E-13 DPC-1	<b>DAMON TURNER</b> <b>Scott Hughes</b>	<b>OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK</b> <b>3-28-18 <a href="#"><u>26</u></a></b>
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**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

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

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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 March 28, 2018. By the court’s calculation, 27 days’ notice was provided. 14 days’ notice is required.

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

<b>The Objection to Confirmation of Plan is sustained.</b>
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David Cusick (“the Chapter 13 Trustee”) opposes confirmation of the Plan on the basis that:

- A. Damon Turner (“Debtor”) is delinquent on plan payments;
- B. Debtor filed two plans, one unsigned but sent to creditors; and
- C. Debtor’s income and expenses have not been updated to reflect information provided at the Meeting of Creditors.

The Chapter 13 Trustee’s objections are well-taken. The Chapter 13 Trustee asserts that Debtor is \$3,322.00 delinquent in plan payments, which represents one month of the 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).

The Chapter 13 Trustee notes that Debtor filed two plans on February 13, 2018. Dckt. 5, 8. The first filed plan is what was sent with the Notice of Meeting of Creditors. Dckt. 18. That plan is not signed by Debtor or counsel, though. The second plan is signed. The Chapter 13 Trustee requests that the original, signed document be provided for review or that a declaration be filed stating that the parties signed the plan. *See* LOCAL BANKR. R. 9004-1(c)(1)(D).

Lastly, the Chapter 13 Trustee argues that Debtor’s income and expenses are different than scheduled based upon statements from the Meeting of Creditors. At the meeting, Debtor stated that he has a new job and earns \$200.00 more per month. He also stated that the monthly expense for his yard maintenance business is \$25.00, which is not listed on Schedule I. No attachment was provided for Debtor’s non-filing spouse’s business income listed on Schedule I in the amount of \$1,260.00.

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

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

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

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

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



**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).**

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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 March 27, 2018. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

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

<b>The Objection to Confirmation of Plan is sustained.</b>
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David Cusick ("the Chapter 13 Trustee") opposes confirmation of the Plan on the basis that:

- A. Jerimiah Cannaday ("Debtor") is delinquent under the current Plan;
- B. Debtor failed to appear at the first meeting of creditors;
- C. Debtor failed to provide tax returns;
- D. Debtor failed to provide pay advices;
- E. Debtor has not yet filed a motion to value collateral; and
- F. Debtor has failed to provide the Chapter 13 Trustee with a Class 1 Checklist and Authorization for Loan Care Servicing's Class 1 Mortgage.

The Chapter 13 Trustee's objections are well-taken. The Chapter 13 Trustee asserts that Debtor is \$6,890.00 delinquent in plan payments, which represents one month of the \$6,890.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

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

The Chapter 13 Trustee's April 19, 2018 First Meeting Docket Entry Report states that Debtor and counsel appeared at the April 19, 2018 continued First Meeting and it was concluded.

Debtor has not provided the Chapter 13 Trustee with employer payment advices for the sixty-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv). Also, the Chapter 13 Trustee argues that Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A); 11 U.S.C. § 1325(a)(9); FED. R. BANKR. P. 4002(b)(3).

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). The Chapter 13 Trustee alleges that Debtor proposes to value the secured claim of Jeff Garcia in Class 2 but has not yet filed a motion to value collateral. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

The Chapter 13 Trustee alleges finally that Debtor has failed to provide the Chapter 13 Trustee with a Class 1 Checklist and Authorization for Loan Care Servicing's Class 1 Mortgage.

In reviewing Schedules I and J, the court notes that Debtor states he has monthly gross income of \$15,000. Dckt. 11 at 25. From this, his only deduction is for income taxes, medicare taxes, and Social Security taxes. *Id.* at 26. There are no deductions for any insurance. On Schedule J, Debtor lists having four dependents—three daughters and a spouse. *Id.* at 27. On Schedule J, there are no expenses for any health insurance. However, Debtor states that he has out-of-pocket medical and dental expenses of \$1,200 per month (which is not the expense line item for insurance).

Debtor also states that he has no vehicle insurance. But on Schedule A/B, Debtor lists owning a 2016 Chevrolet Tahoe and a 2016 Dodge Durango. *Id.* at 11. No car payments are listed on Schedule J. *Id.* at 28. For the two vehicles, \$42,076 and \$62,139.07 are listed in Class 2, with the obligations to be amortized over sixty months at 3.0% interest. This is a further inconsistency with the normal indices of vehicle ownership.

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

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

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

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

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

19.	<a href="#"><u>18-20684</u></a> -E-13 JHW-1	<b>JERIMIAH CANNADAY</b> Steven Shumway	<b>OBJECTION TO CONFIRMATION OF PLAN BY AMERICREDIT FINANCIAL SERVICES, INC.</b> 3-21-18 <a href="#"><u>[22]</u></a>
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**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

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

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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 March 21, 2018. By the court’s calculation, 34 days’ notice was provided. 14 days’ notice is required.

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

<b>The Objection to Confirmation of Plan is sustained.</b>
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Americredit Financial Services, Inc. dba GM Financial (“Creditor”) holding a secured claim opposes confirmation of the Plan on the basis that Jerimiah Cannaday’s (“Debtor”) Plan fails to provide for the present value of Creditor’s secured claim by not providing the discount rate.

Creditor’s objection is well-taken. Creditor objects to the confirmation of the Plan on the basis that the Plan calls for adjusting the interest rate on its loan with Debtor to 3.0%. Creditor’s claim is secured by a 2016 Chevrolet Tahoe. Creditor argues that this interest rate is outside the limits authorized by the Supreme Court in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). In *Till*, a plurality of the Court supported the “formula approach” for fixing post-petition interest rates. *Id.* Courts in this district have interpreted *Till* to require the use of the formula approach. *See In re Cachu*, 321 B.R. 716 (Bankr. E.D. Cal. 2005); *see also Bank of Montreal v. Official Comm. of Unsecured Creditors (In re American Homepatient, Inc.)*, 420 F.3d 559, 566 (6th Cir. 2005) (*Till* treated as a decision of the Court). Even before *Till*, the Ninth Circuit had a preference for the formula approach. *See Cachu*, 321 B.R. at 719 (citing *In re Fowler*, 903 F.2d 694 (9th Cir. 1990)).

The court agrees with the court in *Cachu* that the correct valuation of the interest rate is the prime rate in effect at the commencement of this case plus a risk adjustment. The court fixes the interest rate as the prime rate in effect at the commencement of the case, 4.50%, plus a 1.25% risk adjustment, for a 5.75% interest rate. The objection to confirmation of the Plan on this basis is sustained. *See* 11 U.S.C. § 1325(a)(5)(B)(ii).

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 Americredit Financial Services, Inc. dba GM Financial (“Creditor”) holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

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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 March 28, 2018. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

<b>The Objection to Confirmation of Plan is sustained.</b>
--

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

- A. Anthony Gianola and Wendy Gianola ("Debtor") failed to provide the last four years of tax returns;
- B. Debtor relies on a pending Motion to Value a vehicle;
- C. Debtor's Plan is not feasible because it lists an Internal Revenue Service ("IRS") tax debt at \$20,000.00 when the creditor has a priority debt listed at \$32,785.29, Proof of Claim No. 5;
- D. Debtor's Plan is not the best effort because claims deductions from income are not supported by the record.

The Chapter 13 Trustee's objections are well-taken. Debtor admitted at the Meeting of Creditors that the federal income tax returns for the 2014, and 2015–17 tax years have not been filed still. Filing of the return is required. 11 U.S.C. § 1308. Failure to file a tax return is grounds to deny confirmation. 11 U.S.C. § 1325(a)(1).

The Chapter 13 Trustee notes that Debtor proposes a treatment that relies upon the court valuing a claim for Mercedes-Benz Financial Services USA, LLC. The court heard and granted that motion at the April 24, 2018 hearing.

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Chapter 13 Trustee, the Plan will complete in eighty-one months due to an IRS priority tax debt listed at \$32,785.29. Debtor listed the debt on Schedule E/F for only \$20,000.00. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

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

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

The Chapter 13 Trustee alleges that vehicle ownership expenses of \$135.00 should be \$335.00 because the amount has not been properly amortized over sixty months. Debtor lists \$254.26 of mandatory payroll deductions but also lists \$470.93 in involuntary payroll deductions that are described as "mandatory retirement, union and unfirm costs." Debtor testified at the First Meeting of Creditors that the mortgage is current but lists a \$208.33 mortgage arrearage. Finally, Debtor has disposable income totaling \$1,095.35, and unsecured creditors are entitled to receive \$65,721.00, but the Plan proposes to pay a 0.00% dividend to unsecured claims.

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

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

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

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

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

21. [18-20387](#)-E-13  
DPC-1

**ERIC FERRARI**  
**James Keenan**

**CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY DAVID P.  
CUSICK**  
**3-8-18 [15]**

**NO APPEARANCE OF DEBTOR'S COUNSEL REQUIRED  
IF DEBTOR CONCURS WITH THE REQUESTED  
CONTINUANCE TO JUNE 26, 2018, AT 3:00 P.M.**

**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 March 8, 2018. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

**The hearing on the Objection to Confirmation of Plan is continued to 3:00 p.m.  
on June 26, 2018.**

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

A. Eric Ferrari ("Debtor") failed to appear at the first Meeting of Creditors,

- B. Debtor is delinquent,
- C. Debtor failed to file a Business Budget detailing business income and expenses, and
- D. Debtor failed to file the requisite business documents.

### **APRIL 3, 2018 HEARING**

At the hearing, the court continued the matter to 3:00 p.m. on April 24, 2018. Dckt. 19.

### **CHAPTER 13 TRUSTEE'S STATUS UPDATE**

The Chapter 13 Trustee filed a Status Update on April 16, 2018. Dckt. 23. He states that Debtor has resolved a majority of the grounds raised in the Objection, but he has not yet provided copies of business and corporate tax returns for 2015 and 2016. Based upon statements from the April 12, 2018 Meeting of Creditors, the Chapter 13 Trustee believes that not all tax returns have been filed.

The Chapter 13 Trustee requests that this matter be continued to 3:00 p.m. on June 26, 2018, to provide time for Debtor to file the tax returns.

### **DISCUSSION**

On April 12, 2018, Debtor filed the missing business budget. Dckt. 21. Additionally, Debtor and his counsel appeared at the Meeting of Creditors on April 12, 2018, according to the Chapter 13 Trustee's report from the meeting.

Debtor appears to have cured two of the Chapter 13 Trustee's grounds, but there are two remaining grounds that have not been addressed on the record.

The Chapter 13 Trustee asserts that Debtor is \$700.00 delinquent in plan payments, which represents one month of the \$700.00 plan payment. Before the hearing, another plan payment will be due. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

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

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

11 U.S.C. § 521(e)(2)(A); FED. R. BANKR. P. 4002(b)(3). Those documents are required seven days before the date set for the first meeting. 11 U.S.C. § 521(e)(2)(A)(I). Without Debtor submitting all required



documents, the court and the Chapter 13 Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325.

The tax returns have not been filed, but the Chapter 13 Trustee appears to be willing to allow this case to continue—at least for a short while—because of the efforts Debtor has presented so far. The court agrees that a continuance is appropriate for Debtor to file the missing tax returns. The hearing is continued to 3:00 p.m. on June 26, 2018.

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

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

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

**IT IS ORDERED** that the hearing on the Objection to Confirmation of the Plan is continued to 3:00 p.m. on June 26, 2018.

# FINAL RULINGS

22. 17-25403-E-13 BYLLIE DEE  
Bert Carter

**OBJECTION TO CLAIM OF ECMC,  
CLAIM NUMBER 3**  
3-20-18 [129]

**Final Ruling:** No appearance at the April 24, 2018 hearing is required.

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

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

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

The Objection to Proof of Claim filed by ECMC, having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

23. 17-25403-E-13 BYLLIE DEE  
Bert Carter

**OBJECTION TO CLAIM OF  
PORTFOLIO RECOVERY ASSOCIATES,  
CLAIM NUMBER 4  
3-20-18 [131]**

**Final Ruling:** No appearance at the April 24, 2018 hearing is required.

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

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

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

The Objection to Proof of Claim filed by Portfolio, having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

24. [17-25403](#)-E-13      **BYLLIE DEE**  
**Bert Carter**

**OBJECTION TO CLAIM OF LVNV  
FUNDING, LLC, CLAIM NUMBER 6  
3-20-18 [133]**

**Final Ruling:** No appearance at the April 24, 2018 hearing is required.  
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The case having previously been dismissed, the Objection is overruled as moot.

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

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

The Objection to Proof of Claim filed by LVNV Funding, having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

25.     [17-25403](#)-E-13     BYLLIE DEE     **OBJECTION TO CLAIM OF**  
                                  Bert Carter     **AMERICAN EXPRESS BANK, FSB,**  
  **CLAIM NUMBER 5**  
  **3-20-18 [[135](#)]**

**Final Ruling:** No appearance at the April 24, 2018 hearing is required.  
-----

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

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

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

The Objection to Proof of Claim filed by ECMC, having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

26.     [17-25403](#)-E-13     BYLLIE DEE     **OBJECTION TO CLAIM OF**  
                                  Bert Carter     **AMERICAN EXPRESS CENTURION**  
  **BANK, CLAIM NUMBER 1**  
  **3-20-18 [[137](#)]**

**Final Ruling:** No appearance at the April 24, 2018 hearing is required.  
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The case having previously been dismissed, the Objection is overruled as moot.

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

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

The Objection to Proof of Claim filed by ECMC, having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

27. [15-20709](#)-E-13      **TIMOTHY/MARY SULLIVAN**      **MOTION TO MODIFY PLAN**  
LBG-2                      **Lucas Garcia**                      **3-6-18 [41]**

**Final Ruling:** No appearance at the April 24, 2018 hearing is required.

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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 March 6, 2018. By the court’s calculation, 49 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(g) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

<p><b>The Motion to Confirm the Modified Plan is granted.</b></p>
---

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Timothy Sullivan and Mary Sullivan (“Debtor”) have filed evidence in support of confirmation. David Cusick (“the Chapter 13 Trustee”) filed a Response indicating non-opposition on April 6, 2018. Dckt. 49. 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 Timothy Sullivan and Mary Sullivan (“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 March 6, 2018, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick (“the Chapter 13 Trustee”) for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

28. [17-23911](#)-E-13      **CRAIG MASON**      **OBJECTION TO CLAIM OF**  
LBG-4      **Lucas Garcia**      **CADLEROCK III LLC., CLAIM NO. 2**  
3-2-18 [\[79\]](#)

**Final Ruling:** No appearance at the April 24, 2018 hearing is required.  
-----

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

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Chapter 13 Trustee, and Office of the United States Trustee on March 2, 2018. By the court’s calculation, 53 days’ notice was provided. 44 days’ notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days’ notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days’ notice for written opposition).

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

**The Objection to Proof of Claim Number 2-1 of CadleRock III LLC is sustained, and the claim is disallowed as secured, but allowed as unsecured.**

Craig Mason, Chapter 13 Debtor (“Objector”) requests that the court disallow the claim of CadleRock III LLC (“Creditor”), Proof of Claim No. 2-1 (“Claim”), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of \$61,685.01. Objector asserts that the Claim should be

listed as unsecured instead of secured because if it is secured, then it would be secured by business interests of a corporation and not of Objector himself or his personal property.

## 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).

Objector asserts that the claim is unsecured, but to the extent that it may be secured, Objector claims it would be secured by business interests of Evolution Group, not by any of Objector's property. Creditor's Proof of Claim 2-1 was filed on August 30, 2017, asserting that the Claim is secured by "Inventory, Equipment, Accounts" according to "UCC-1" as perfection.

Creditor attached various documents in support of its claim. There is a Demand Line of Credit Note and Agreement in the amount of \$75,000.00 entered into between U.S. Bank N.A. and Evolution Group, Inc., as the borrowing organization and executed by Objector as CEO. The Demand Line of Credit Agreement states that it is secured by a Security Agreement dated September 9, 2003. The Security Agreement lists that there are three forms of securing collateral, stated as:

- A. All **accounts**, instruments, documents, chattel paper, general intangibles, contract rights, investment property (including any securities entitlements and/or securities accounts held by Debtor), securities and certificates of deposit, deposit accounts, and letter of credit rights; and
- B. All **inventory**; and
- C. All **equipment**.

(emphasis added). That Security Agreement is signed by Objector as CEO of Evolution Group, Inc., on September 9, 2003. Another document attached to the Claim is a Continuing Guaranty, also entered into on September 9, 2003. Objector agreed to be personally liable for the corporation's debt. Additionally, there are documents attached amending the agreements to substitute Creditor as the secured claimholder.

The Claim appears to be based on the following points. Objector's corporation received a line of credit and offered business assets as security for it. Additionally, Objector agreed to be personally liable for the corporation's debt.

The claim documents show clearly that Creditor's claim is secured by business assets of Objector's corporation, not by any property of Objector personally.

Based on the evidence before the court, Creditor's claim is disallowed as a secured claim and is instead allowed as an unsecured claim in the amount of \$61,685.01. The Objection to the Proof of Claim is sustained.

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

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

The Objection to Claim of CadleRock III LLC ("Creditor"), filed in this case by Craig Mason ("Chapter 13 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 Objection to Proof of Claim Number 2-1 of CadleRock III LLC is sustained, and the claim is disallowed as a secured claim and is allowed as an unsecured claim in the amount of \$61,185.01.

29. [17-26217](#)-E-13      LATRICE/MICHAEL HATCHER      MOTION TO MODIFY PLAN  
PGM-1                      Peter Macaluso                      3-19-18 [\[37\]](#)

**Final Ruling:** No appearance at the April 24, 2018 hearing is required.  
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The case having previously been dismissed, the Motion is dismissed as moot.

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

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

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

**IT IS ORDERED** that the Motion is dismissed as moot, the case having been dismissed.



30.

[17-22620](#)-E-13  
DEF-3

JEANNIE REES  
David Foyil

OBJECTION TO CLAIM OF  
SPECIALIZED LOAN SERVICING, LLC,  
CLAIM NUMBER 1  
2-28-18 [\[62\]](#)

**Final Ruling:** No appearance at the April 24, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on February 28, 2018. By the court's calculation, 55 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

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

**The Objection to Proof of Claim Number 1-1 of Specialized Loan Servicing, LLC, is sustained, and the claim is disallowed to the extent that it asserts that a pre-petition arrearage exists.**

Jeannie Rees, Chapter 13 Debtor ("Objector") requests that the court disallow the claim of Specialized Loan Servicing, LLC, ("Creditor"), Proof of Claim No. 1-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of \$262,496.50. Objector asserts that the Claim is incorrect to assert that there is a pre-petition arrearage of \$1,518.73.

## 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).

In Objector's declaration, she states that a statement of March 18, 2017, from Creditor is attached showing that a payment of \$1,541.17 was due on May 1, 2017, and that there was no past due balance. Dckt. 64. A review of that statement shows \$0.00 listed as "Past Due Amount," and the statement is dated March 18, 2017. Exhibit B, Dckt. 65. The next payment was due on May 1, 2017, in the amount of \$1,541.17. *Id.* This case was filed on April 20, 2017. There was no payment that was due before this case was filed, so there was no possibility for Objector to have defaulted on a pre-petition payment.

This Objection was filed according to the procedure of Local Bankruptcy Rule 3007-1(b)(1), requiring written opposition, but Creditor has not responded. Creditor has defaulted on its opportunity to oppose the Objection.

Based on the evidence before the court, Creditor's claim is disallowed to the extent that it asserts a pre-petition arrearage of \$1,518.73. The Objection to the Proof of Claim is sustained.

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

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

The Objection to Claim of Specialized Loan Servicing, LLC ("Creditor"), filed in this case by Jeannie Rees ("Chapter 13 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 Objection to Proof of Claim Number 1-1 of Specialized Loan Servicing, LLC, is sustained, and the claim is disallowed to the extent it asserts a pre-petition arrearage of \$1,518.73.

**Final Ruling:** No appearance at the April 24, 2018 hearing is required.

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 17, 2018. By the court’s calculation, 38 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(g) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

**The Motion to Confirm the Modified Plan is granted.**

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Emma McZeek-Tanko (“Debtor”) has filed evidence in support of confirmation. David Cusick (“the Chapter 13 Trustee”) filed a Response indicating non-opposition on April 6, 2018. Dckt. 109. 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 Emma McZeek-Tanko (“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 March 17, 2018, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick ("the Chapter 13 Trustee") for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

32. [18-22041](#)-E-13      **KRISTY NEAL**      **MOTION TO VALUE COLLATERAL OF**  
**RJ-1**      **Richard Jare**      **GM FINANCIAL**  
4-10-18 [\[11\]](#)

**Final Ruling:** No appearance at the April 24, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on April 10, 2018. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

**The Motion to Value Collateral and Secured Claim of GM Financial  
("Creditor") is dismissed without prejudice.**

The Motion filed by Kristy Neal ("Debtor") to value the secured claim of GM Financial ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2012 Volkswagen CC Sedan 4D R-Line ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$7,600.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

#### **CHAPTER 13 TRUSTEE'S RESPONSE**

David Cusick ("the Chapter 13 Trustee") filed a Response on April 13, 2018. Dckt. 17. The Chapter 13 Trustee states that there are missing schedules in this case and that the Motion is contradictory because it lists valuations of \$7,600.00 in place and \$13,000.00 in another.

#### **RULING**

Debtor filed an amended motion on April 13, 2018, that asserts a valuation of \$7,600.00 for the Vehicle throughout the motion. Dckt. 20. Then, two minutes later on April 13, 2018, Debtor filed a new

motion to value that is identical to the amended motion filed for this matter. The new motion contains the same text, but it bears DCN RJ-002 and has been set for hearing at 3:00 p.m. on May 15, 2018.

Debtor having filed a new, identical motion and having set it for hearing on May 15, 2018, acts as a de facto withdrawal of the current motion. Therefore, the Motion is dismissed without prejudice.

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

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

The Motion to Value Collateral and Secured Claim filed by Kristy Neal (“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 dismissed without prejudice.

33.

[14-24643](#)-E-13  
SJD-4

LAQUETA MARTIN  
Susan Dodds

MOTION FOR COMPENSATION FOR  
SUSAN DODDS, DEBTORS ATTORNEY(S)  
3-27-18 [[156](#)]

**Final Ruling:** No appearance at the April 24, 2018 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 21, 2018. By the court’s calculation, 34 days’ notice was provided. 28 days’ notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days’ notice only when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days’ notice for written opposition).

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

<b>The Motion for Allowance of Professional Fees is granted.</b>
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Susan Dodds, the Attorney (“Applicant”) for LaQueta Martin, the Chapter 13 Debtor (“Client”), makes a Request for the Additional Allowance of Fees and Expenses in this case.

Fees are requested for the period June 12, 2014, through February 21, 2018. Applicant requests fees in the amount of \$1,000.00.

#### CHAPTER 13 TRUSTEE’S NON-OPPOSITION

On March 29, 2018, David Cusick (“the Chapter 13 Trustee”) filed a Non-Opposition to the Motion for Allowance of Professional Fees. Dckt. 161.

#### STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

(i) unnecessary duplication of services; or

(ii) services that were not—

(I) reasonably likely to benefit the debtor's estate;

(II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). An attorney must “demonstrate only that the services were reasonably likely to benefit the estate at the time rendered,” not that the services resulted in actual, compensable, material benefits to the estate. *Ferrette & Slatter v. United States Tr. (In re Garcia)*, 335 B.R. 717, 724 (B.A.P. 9th Cir. 2005) (citing *Roberts, Sheridan & Kotel, P.C. v. Bergen Brunswick Drug Co. (In re Mednet)*, 251 B.R. 103, 108 (B.A.P. 9th Cir. 2000)). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

## **APPLICABLE LAW**

### **Reasonable Fees**

A bankruptcy court determines whether requested fees are reasonable by examining the circumstances of the attorney's services, the manner in which services were performed, and the results of the services, by asking:

- A. Were the services authorized?
- B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?
- C. Are the services documented adequately?
- D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?
- E. Did the attorney exercise reasonable billing judgment?

*In re Garcia*, 335 B.R. at 724 (citing *In re Mednet*, 251 B.R. at 108; *Leichty v. Neary (In re Strand)*, 375 F.3d 854, 860 (9th Cir. 2004)).

### **Reasonable Billing Judgment**

Even if the court finds that the services billed by an attorney are “actual,” meaning that the fee application reflects time entries properly charged for services, the attorney must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors’ Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the services provided because the court’s authorization to employ an attorney to work in a bankruptcy case does not give that attorney “free reign to run up a [fees and expenses] tab without considering the maximum probable recovery,” as opposed to a possible recovery. *Id.*; see also *Brosio v. Deutsche Bank Nat’l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) (“Billing judgment is mandatory.”). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney is obligated to consider:

- (a) Is the burden of the probable cost of legal services disproportionately large in relation to the size of the estate and maximum probable recovery?
- (b) To what extent will the estate suffer if the services are not rendered?
- (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

*In re Puget Sound Plywood*, 924 F.2d at 958–59 (citing *In re Wildman*, 72 B.R. 700, 707 (N.D. Ill. 1987)).



A review of the application shows that Applicant's services for the Estate include prosecuting eleven objections that have arisen in this case, eleven of which were Motions to Dismiss. The court finds the services were beneficial to Client and the Estate and were reasonable.

### **"No-Look" Fees**

In this District, the Local Rules provide consumer counsel in Chapter 13 cases with an election for the allowance of fees in connection with the services required in obtaining confirmation of a plan and the services related thereto through the debtor obtaining a discharge. Local Bankruptcy Rule 2016-1 provides, in pertinent part,

(a) Compensation. Compensation paid to attorneys for the representation of chapter 13 debtors shall be determined according to Subpart (c) of this Local Bankruptcy Rule, unless a party-in-interest objects or the attorney opts out of Subpart (c). The failure of an attorney to file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys, shall signify that the attorney has opted out of Subpart (c). When there is an objection or when an attorney opts out, compensation shall be determined in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017, and any other applicable authority."

...

(c) Fixed Fees Approved in Connection with Plan Confirmation. The Court will, as part of the chapter 13 plan confirmation process, approve fees of attorneys representing chapter 13 debtors provided they comply with the requirements to this Subpart.

(1) The maximum fee that may be charged is \$4,000.00 in nonbusiness cases, and \$6,000.00 in business cases.

(2) The attorney for the chapter 13 debtor must file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys.

(3) If the fee under this Subpart is not sufficient to fully and fairly compensate counsel for the legal services rendered in the case, the attorney may apply for additional fees. The fee permitted under this Subpart, however, is not a retainer that, once exhausted, automatically justifies a motion for additional fees. Generally, this fee will fairly compensate the debtor's attorney for all preconfirmation services and most postconfirmation services, such as reviewing the notice of filed claims, objecting to untimely claims, and modifying the plan to conform it to the claims filed. Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation. Form EDC 3-095, Application and Declaration RE: Additional Fees and Expenses in Chapter 13 Cases, may be used when seeking additional fees. The necessity for a hearing on the application shall be governed by Fed. R. Bankr. P. 2002(a)(6).

The Order Confirming the Chapter 13 Plan expressly provides that Applicant is allowed \$4,000.00 in attorneys' fees, the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dckt. 95. Applicant prepared the order confirming the Plan.

### **Lodestar Analysis**

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

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

### **FEES AND COSTS & EXPENSES REQUESTED**

#### **Fees**

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

Objection to Confirmation of Plan: Applicant spent 0.5 hours in this category. Applicant reviewed the Chapter 13 Trustee's Objection to Confirmation of Plan.

Motion to Dismiss: Applicant spent 12.8 hours in this category. Applicant reviewed the ten Motions to Dismiss, filed Replies to the Motions to Dismiss, reviewed the Chapter 13 Trustee's Responses, attended hearings on the Motions, reviewed supplemental filings, and reviewed tentative rulings.

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

<b>Names of Professionals and Experience</b>	<b>Time</b>	<b>Hourly Rate</b>	<b>Total Fees Computed Based on Time and Hourly Rate</b>
Susan Dodds, Attorney	13.30 hours	\$250.00	\$3,325.00
<b>Voluntary Reduction in Fees</b>			\$2,325.00
<b>Total Fees for Period of Application</b>			\$1,000.00

## **FEES AND COSTS & EXPENSES ALLOWED**

### **Fees**

The unique facts surrounding the case, including the prosecution of ten Motions to Dismiss and one Objection to Confirmation, raise substantial and unanticipated work for the benefit of the Estate, Debtor, and parties in interest. The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. The request for additional fees in the amount of \$1,000.00 is approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 13 Trustee from the available funds of the Plan in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

Applicant is allowed, and the Chapter 13 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	\$1,000.00
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pursuant to this Application as final fees pursuant to 11 U.S.C. § 330 in this case.

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

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

The Motion for Allowance of Fees and Expenses filed by Susan Dodds (“Applicant”), Attorney having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Susan Dodds is allowed the following fees and expenses as a professional of the Estate:

Susan Dodds, Professional Employed by LaQueta Martin (“Debtor”)

Fees in the amount of \$1,000.00

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

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

34. [17-27751](#)-E-13      **MISAEAL/LUZ BAUTISTA**      **MOTION TO DISGORGE FEES**  
DPC-3      **Harry Roth**      **3-16-18 [109]**

**Final Ruling:** No appearance at the April 24, 2018 hearing is required.  
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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, and Office of the United States Trustee on March 16, 2018. By the court’s calculation, 39 days’ notice was provided. 28 days’ notice is required.

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

David Cusick (“the Chapter 13 Trustee”) moves the Court for an order disgorging Harry Roth’s (“Attorney”) attorney fees in this case pursuant to 11 U.S.C. § 329. The Chapter 13 Trustee argues that this case is not being prosecuted actively, and the amount charged in attorney’s fees may be unreasonable.

The Chapter 13 Trustee targets several deficiencies in this case. First, Statement of Financial Affairs does not disclose the date that Attorney was paid \$4,000.00 for services in this case. Dckt. 19.

Second, the Chapter 13 Trustee argues that fees should be disgorged because the case was skeletal when filed on November 28, 2017; the schedules, Statement of Financial Affairs, Plan, Attorney Disclosure Statement or Rights and Responsibilities were not filed until December 12, 2017, and were dated December 6, 2017. The Chapter 13 Trustee notes that the case was even dismissed on December 18, 2017, until reinstated after a motion by Attorney.

Third, a motion for relief was filed on December 1, 2017, asserting grounds for an unlawful detainer action in state court. The plan in this case, though, was premised on Misael Bautista and Luz Bautista (“Debtor”) owning the contested real property, which would require an adversary proceeding to obtain possession from the current owner. Debtor even admitted that at the Meeting of Creditors.

Fourth, the Plan also provides for a claim of Honda Financial Services in Class 2 to be valued, and Debtor filed a motion to value. *See* Dckt. 53. Pleadings by Honda Financial Services indicate that the securing vehicle is leased by Debtor. The Chapter 13 Trustee is concerned that Attorney did not discuss the lease agreement with Debtor and filed the motion to value after learning that the vehicle was leased, not purchased.

## **APPLICABLE LAW**

The court has the authority, and responsibility, to consider attorney’s fees obtained or to be paid prior to or during a bankruptcy case. 11 U.S.C. §§ 329, 330, 331; *see also Law Offices of Nicholas A. Franke v. Tiffany (In re Lewis)*, 113 F.3d 1040, 1045 (9th Cir. 1997). Fees in excess of the reasonable value of such services may be ordered repaid. *See In re Lawas*, No. 13-33513-E-13, 2014 Bankr. LEXIS 623 (Bankr. E.D. Cal. Feb. 12, 2014). The application of 11 U.S.C. § 329 and the Federal Rules of Bankruptcy Procedure may seem harsh, but they are necessary not only to protect vulnerable consumers and business owners, but also to protect the integrity of the federal judicial process. *See Neben & Starrett v. Charwell Fin. Corp. (In re Park-Helena Corp.)*, 63 F.3d 877, 881 (9th Cir. 1995). Debtor’s counsel must lay bare all dealings regarding compensation and must be direct and comprehensive. *See Kavanagh v. Leija (In Re Leija)*, 270 B.R. 497, 501 (Bankr. E.D. Cal. 2001) (citation omitted); *In re Bob’s Supermarket’s, Inc.*, 146 B.R. 20, 25 (Bankr. D. Mont. 1992), *aff’d in part and rev’d in part*, 165 B.R. 339 (B.A.P. 9th Cir. 1993). The burden is on the person to be employed to come forward and to make full, candid, complete disclosure. *In re B.E.S. Concrete Products, Inc.*, 93 B.R. 228 (E.D. Cal. 1988). The federal courts are not mere devices to be used to generate fees for attorneys irrespective of any bona fide rights to be adjudicated.

## **RULING**

Attorney filed this case without all of the required documents, and the case was actually dismissed for failure to timely file documents until Attorney brought a successful motion to vacate dismissal. *See* Dckt. 24, 32.

More alarming is that the proposed plan—which was denied confirmation on February 13, 2018—calls for Debtor to file an adversary proceeding to recover ownership of property to the extent that Debtor has such a claim, but no such adversary proceeding has been filed. Additionally, the Plan calls for a secured claim to be valued, but as the court noted at the February 13, 2018, hearing the claim could not

be valued because the underlying security agreement was a lease for a vehicle. Dckt. 85. There was no actual property of Debtor.

The court finds that Attorney has not performed in a way in this case that merits an award of \$4,000.00 in attorney fees. The court orders the \$4,000.00 Attorney has received in this case already to be disgorged, paid to the Chapter 13 Trustee, and the Chapter 13 Trustee to disburse the full \$4,000.00 to Debtor.

To the extent that Attorney seeks compensation in this case, he can do so by a motion pursuant to 11 U.S.C. § 330.

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

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

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

**IT IS ORDERED** that the Motion is granted, and Harry Roth (“Attorney”) is ordered to disgorge \$4,000.00 of attorney’s fees in this case. Attorney shall pay the \$4,000.00 to the Chapter 13 Trustee on or before May 24, 2018. The Chapter 13 Trustee shall disburse the \$4,000.00 received from Attorney directly to Misael Bautista and Luz Bautista (“Debtor”).

35.    [17-24979](#)-E-13        **MARIO LOPEZ AND LEAH**        **MOTION TO CONFIRM PLAN**  
         **LBG-3**                    **ALBERTO**                    **3-7-18 [\[75\]](#)**  
                                 **Lucas Garcia**

**Final Ruling:** No appearance at the April 24, 2018 hearing is required.  
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The case having previously been dismissed, the Motion is dismissed as moot.

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

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

The Motion to Confirm Second Amended Chapter 13 Plan having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is dismissed as moot, the case having been dismissed.

36. [18-20885](#)-E-13 ANTHONY/WENDY GIANOLA MOTION TO VALUE COLLATERAL OF  
PGM-1 Peter Macaluso MERCEDES-BENZ FINANCIAL  
SERVICES USA, LLC  
3-23-18 [\[16\]](#)

**Final Ruling:** No appearance at the April 24, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on March 23, 2018. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

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

**The Motion to Value Collateral and Secured Claim of Mercedes-Benz Financial Services USA, LLC ("Creditor") is granted, and Creditor's secured claim is determined to have a value of \$8,000.00.**

The Motion filed by Anthony Gianola and Wendy Gianola ("Debtor") to value the secured claim of Mercedes-Benz Financial Services USA, LLC, ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2013 Mercedes C250 ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$8,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED.R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

#### CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on April 11, 2018. Dckt. 25. He notes that his pleading was filed late, and he notes that Creditor filed a secured claim in the amount of \$11,940.07.



## RULING

The lien on the Vehicle's title secures a purchase-money loan incurred on March 21, 2014, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$11,940.07. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of \$8,000.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion to Value Collateral and Secured Claim filed by Anthony Gianola and Wendy Gianola ("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 Mercedes-Benz Financial Services USA, LLC, ("Creditor") secured by an asset described as 2013 Mercedes C250 ("Vehicle") is determined to be a secured claim in the amount of \$8,000.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$8,000.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.