UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

Pursuant to District Court General Order 612, no persons are permitted to appear in court unless authorized by order of the court. All appearances of parties and attorneys shall be telephonic through CourtCall, which advises the court that it is waiving the fee for the use of its service by *pro se* (not represented by an attorney) parties through June 1, 2020. **The contact information for CourtCall to arrange for a phone appearance is: (866) 582-6878**.

April 28, 2020 at 3:00 p.m.

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1. **18-26407-E-13** **NICHOLE MORGAN** **MOTION TO MODIFY PLAN**
RWH-3 **Ronald Holland** **3-9-20 [62]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 9, 2020. By the court's calculation, 50 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is denied.

The debtor, Nichole Cleveland Morgan ("Debtor") seeks confirmation of the Modified Plan to deal with the deficiencies in her case after incurring unexpected expenses related to her elderly father needing financial assistance. Declaration, Dckt. 64. The Modified Plan provides that commencing in April 2020, monthly payments of $4,315.00 and a 0% percent dividend to unsecured claims totaling $30,126.86. Modified Plan, Dckt. 59. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on March 30, 2020. Dckt. 67. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor is delinquent in plan payments.

DISCUSSION

The Chapter 13 Trustee asserts that Debtor is $2,100.00 delinquent in plan payments, which represents a portion of one month of the $4,315.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Trustee stated that Debtor has paid $56,972.00 into the plan to date.

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 the debtor, Nichole Cleveland Morgan ("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.

2. **19-27811-E-13 MRL-1** **JOSE/ALICIA SANTANA** **Mikalah Liviakis** **MOTION TO CONFIRM PLAN** **3-6-20 [33]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 6, 2020. By the court's calculation, 53 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan, as amended at the hearing, is granted.

The debtor, Jose Santana and Alicia Martinez Santana ("Debtor"), seek confirmation of the Amended Plan. The Amended Plan provides for monthly payments of $2,320.00 for 12 months, followed by monthly payments of $2,500.00 for 48 months, and a 4.5% dividend to unsecured claims totaling $12,427.00. Amended Plan, Dckt. 35. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on April 14, 2020. Dckt. 38. Trustee opposes confirmation of the Plan on the basis that:

A. Plan payments in the amounts stated in the plan do not equal the aggregate of the trustee's fees, monthly post-petition contract installments due on Class 1 claims, monthly administrative expenses, and monthly dividends payable to certain Class 1 and Class 2 claims, and executory contracts and unexpired lease arrearage claims.

DISCUSSION

Debtors filed a Reply and agreed with Trustee's Opposition and propose to resolve the issue by increasing their Plan payments as follows:

a. monthly plan payments of $2,425.80.00 for months 1 through 12,

b. followed by monthly payments of $2,536.91.00 for months 13-32, and

c. monthly payments of $2,525.80 for months 33 through 60.

With such changed terms, the Amended Plan complies with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by the debtors, Jose Santana and Alicia Martinez Santana ("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 6, 2020, is confirmed with following monthly plan payments terms: monthly plan payments of $2,425.80.00 for months 1 through 12, followed by monthly payments of $2,536.91.00 for months 13-32, and monthly payments of $2,525.80 for months 33 through 60. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

3. **19-25930-E-13 WW-3** | **RUDY/FELICIDAD ORPILLA** **Mark Wolff** | **MOTION TO CONFIRM PLAN** **3-3-20 [71]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 3, 2020. By the court's calculation, 56 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is granted.

The debtors, Rudy P. Orpilla and Felicidad A. Orpilla ("Debtor"), seek confirmation of the Amended Plan. The Amended Plan provides for monthly plan payments of $900.00 for four (4) months, followed by monthly payments of $1,000.00 for 56 months, with a 100% dividend to unsecured claims totaling $44,431.00. Amended Plan, Dckt. 75. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on April 14, 2020. Dckt. 83. Trustee opposes confirmation of the Plan on the basis that:

> 1. IMPERMISSIBLE MODIFICATION OF THE MORTGAGES: The plan filed on 3/03/2020 fails to comply with 11 U.S.C. §1322(b)(2). The plan proposes an impermissible modification of the secured claim of Select Portfolio Servicing, the holder of the first deed of trust on the

> debtor's Rocklin rental property. The plan proposes an impermissible modification of the secured claim of Rushmore Loan Management Services, the holder of the first deed of trust on the debtor's Folsom rental property. The plan proposes an impermissible modification of the secured claim of Pentagon Federal Credit Union, the holder of the second deed of trust on the debtor's Folsom rental property. All three of these creditors are listed in Class 4 of the Debtors proposed plan and all three of these creditors filed a proof of claim alleging pre-petition arrears. Class 4 claims, by definition, are secured claims that were current when the case was filed. Since these claims were all delinquent, it appears that Class 1 should be the proper treatment. Failing to propose a cure of the pre-petition arrears is an impermissible modification of the mortgage. If the modification has not been expressly agreed to by the creditor, the plan may not impose it on the creditor.

With the Opposition, the Trustee provides the testimony of his counsel. The testimony of the personal knowledge of the witness consists of: (1) the witnesses age, (2) the witness being employed by the Chapter 13 Trustee and her knowledge of the Trustee's books and records, and the following testimony:

> 3. The plan proposes an impermissible modification of the secured claim of Select Portfolio Servicing, the holder of the first deed of trust on the debtor's Rocklin rental property. The plan proposes an impermissible modification of the secured claim of Rushmore Loan Management Services, the holder of the first deed of trust on the debtor's Folsom rental property. The plan proposes an impermissible modification of the secured claim of Pentagon Federal Credit Union, the holder of the second deed of

> trust on the debtor's Folsom rental property. All three of these creditors are listed in Class 4 of the Debtors proposed plan and all three of these creditors filed a proof of claim alleging pre-petition arrears. Class 4 claims, by definition, are secured claims that were current when the case was filed. Since these claims were all delinquent, it appears that Class 1 should be the proper treatment. Failing to propose a cure of the pre-petition arrears is an impermissible modification of the mortgage. If the modification has not been expressly agreed to by the creditor, the plan may not impose it on the creditor.

This personal knowledge (Fed. R. Evid. 601, 602) is a cut and paste of the legal conclusions stated in the Opposition.

DISCUSSION

Debtor Class 4 creditors include: Pentagon Federal Credit Union, Rushmore Loan Management, and Deutsche Bank National (as Trustee for Select Portfolio Servicing). A review of their respective Proofs of Claim state, under penalty of perjury, that there are pre-petition amounts due.

As stated in the Plan form (EDC 3-080), Class 4 claims are secured claims paid directly by Debtor not in default.

Review of Additional Provisions

With respect to the three creditors identified as not having their pre-petition arrearage cured, the Additional Provisions in Section 7 of the Second Amended Plan states:

> Section 3.10 Class 4
>
> Class 4 Creditors include
>
> | | |
> |---|---|
> | Hilton Vaction (sic) Club | 200 |
> | Pentagon Federal CU/Thorndyke Claim 2 | 371 |
> | Rushmore/JPMorgan/Thorndyke Claim 4 | 2,583.96 |
> | Deutsche Bank National Trust Claim 19-1 | 2,380.29 |
> | Wells Fargo Bank, NA Claim 20-1 | 3,618.83 |
>
> Class 4 creditors are authorized to apply payments received post petition to alleged pre-petition arrears.

Dckt. 75 at 7.

Pentagon Federal Credit Union 2-2

This creditor holds a deed of trust secured by Debtor's residence. The creditor has filed a timely proof of claim in which it asserts ($15,548.74) in pre-petition arrearage.

In the first attachment to Proof of Claim No. 2-2 is the Settlement Statement and Truth in Lending Statement for this claim, which identifies the regular monthly payment to be ($633.40). This is confirmed in the last attachment to Proof of Claim No. 2-2, which is titled "General Loan Inquiry."

In the Motion Debtor states that Debtor is current on the Pentagon Federal Credit Union claim. Motion, p. 2:25-26; Dckt. 71.

Debtor does not state in the Declaration how the ($15,548.74) in pre-petition arrearage has been cured in the six months this Chapter 13 case has been pending.

Wilmington Savings Fund Society, as Trustee (identified in the plan in the name of the servicer, Rushmore Loan Management Services) Proof of Claim 4-1

This creditor holds a deed of trust secured by Debtor's residence. The creditor has filed a timely proof of claim in which it asserts ($3,840.00) in pre-petition arrearage.

In the Proof of Claim Disclosures attachment to Proof of Claim No. 4-1, the regular monthly payment is ($2,583.96), as of the commencement of this case (no Notice of Mortgage Payment Change has been filed). The pre-petition arrearage is stated to include ($1,449.58) in late charges, ($75) in property inspection fees, and ($184.91) in projected escrow shortage.

A Notice of Postpetition Fees and Charges has been filed, asserting ($1,150.00) in post-petition legal fees.

In the Motion Debtor states that Debtor is current on the Wilmington Savings claim. Motion, p. 2:25-26, 3:1; Dckt. 71.

In the Declaration Debtor states that Proof of Claim 4-1 states that Debtor was only one month in arrears when the case was filed. Declaration, p. 2:5-1; Dckt. 73. Debtor states that this has been cured by a direct payment to this creditor.

However, the pre-petition arrearage was not merely one pre-petition payment. Additionally, Debtor does not testify when the payment was made and the source of payments. Given that the case was filed on September 23, 2019, it does not appear that this was a case filed between the due date and the delinquency date, with Debtor having made the payment during the contractual grace period (such as due on the 1st day of the month, but not delinquent until the 10th day of the month).

The Plan does not propose to cure that arrearage and post-petition fees. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearage.

Deutsche Bank National Trust Company, as Trustee (identified as Select Portfolio Servicing, the loan servicer, in the Plan) Proof of Claim 19-2

This creditor holds a deed of trust secured by Debtor's residence. The creditor has filed a timely proof of claim in which it asserts $372.75 in pre-petition arrearage.

In the Mortgage Proof of Claim Attachment to Amended Proof of Claim No. 19-2, the regular monthly payment is ($2,380.29), as of the commencement of this case (no Notice of Mortgage Payment Change has been filed).

In the Motion Debtor does not address the Deutsche Bank claim.

In light of the small amount, it is likely that this is to be, or has been, quickly cured.

Granting of Motion

Debtor has not filed a Reply to the Trustee's Opposition. This may be because the Trustee's Opposition consists of three legal conclusions and does not state the grounds (such as amount of arrearage, the proof of claim the arrearage relates to, and the evidence presented with the Motion).

The Trustee has not countered the testimony concerning the curing of arrearage or the grounds stated in the Motion. The opposition consisting of legal conclusions and a declaration stating legal conclusions to the court does not overcome the Motion and supporting evidence.

If the grounds stated with particularity in the Motion and Debtor's testimony under penalty of perjury turn out not to be true or accurate, it is unfortunate that a plan that does not actually comply with the Bankruptcy Code gets confirmed. While this court follows the direction of the Supreme Court in *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, n.14 (2010), such has its limits. The court does not take on the role of presenting a party's case, but bases it on an accurate statement of the law and the evidence presented. It may be that if the court went through all the filings in this case it could assemble an opposition by a party in interest, but the court has neither the time nor resources to do so.

The Amended Plan, based on the evidence present, does comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is confirmed. [FN. 1]

FN. 1. The Debtor and counsel should not take this as signal that it is open season on pushing plans and positions that violate the Code. If it turns out that this Plan needs to be modified due to a deficiency or defect that existed at the time of confirmation, such would be non unexpected, and no additional legal fees would be awarded for such. Additionally, if there are inaccurate statements in the Declaration made under penalty of perjury or in the Motion, the sanctions for committing perjury and for violating the certifications made by Debtor and counsel pursuant to Federal Rule of Bankruptcy Procedure 9011 (both corrective and punitive) are in play and not rendered moot if one "slips something by the court."

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

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

hearing.

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Rudy P. Orpilla and Felicidad A. Orpilla ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Confirm the Amended Plan is granted, and the proposed Amended Chapter 13 Plan filed on March 3, 2020, is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

4. 19-27459-E-13 MWB-1 — CYNTHIA ROSS, Mark Briden — MOTION TO CONFIRM PLAN 3-4-20 [27]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 3, 2020. By the court's calculation, 56 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is denied.

The debtor, Cynthia Leeann Ross ("Debtor") seeks confirmation of the Modified Plan to include One Main Financial as a Class 2 creditor secured by her 2007 Mustang. Declaration, Dckt. 29. The Modified Plan provides payments of $1,040.00 from January 25, 2020 through March 25, 2020,

followed by monthly payments of $1,400.00 for the remainder of the Plan, and a 0% percent dividend to unsecured claims totaling $30,466.66. Modified Plan, Dckt. 30. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on April 14, 2020. Dckt. 36. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor is delinquent in Plan payments.

B. Plan payments in the amounts stated in the plan do not equal the aggregate of the trustee's fees, monthly post-petition contract installments due on Class 1 claims, monthly administrative expenses, and monthly dividends payable to certain Class 1 and Class 2 claims, and executory contracts and unexpired lease arrearage claims.

DISCUSSION

Delinquency

The Chapter 13 Trustee asserts that Debtor is $1,071.80 delinquent in plan payments, which represents one month of the $1,071.80 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Section 5.02

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor's Plan payment does not account for all fees and payments required to make distributions of the plan payment. According to Trustee's calculations, the aggregate of these monthly amounts plus the trustee's fee is $1,760.94 for months 4-13 and $1,538.72 for months 14-60. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Cynthia Leeann Ross ("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.

5.	**20-20563-E-13 DPC-1**	**CHEREESE CAMACHO Richard Jare**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK 3-17-20 [20]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on March 17, 2020. By the court's calculation, 42 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

The Chapter 13 Trustee, David Cusick ("Trustee"), originally filed an Objection to Confirmation on March 17, 2020. Dckt. 20. At that time, Trustee objected on the basis that Trustee had not yet been able to examine Debtor at the Meeting of Creditors due to COVID-19 and the meeting had been continued to April 16, 2020. *Id.*

On April 23, 2020, Trustee filed a Status Report and opposes confirmation of the Plan on the basis that:

A. Debtor is delinquent in plan payments.

B. Debtor failed to appear at the Meeting of Creditors held on April 16, 2020.

C. Debtor has failed to provide tax returns.

D. Debtor's Plan does not provide for accurate amounts of priority claims.

DISCUSSION

Trustee's objections are well-taken.

Delinquency

Debtor is $200.00 delinquent in plan payments, which represents one month of the $200.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Failure to Appear at 341 Meeting

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

Failure to Provide Tax Returns

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

Failure to Provide for a Priority Claim

Trustee asserts that the Franchise Tax Board has a claim for $789.63, respectively, in priority unsecured debt. Proof of Claim 10, filed on April 9, 2020. Also, Trustee asserts that the Internal Revenue Service has a claim for $18,386.68 in priority unsecured debt, and $14,906.12 in general unsecured debt. Proof of Claim 7, filed on March 25, 2020. The Plan does not provide for all priority debt as required by 11 U.S.C. § 1322(a)(2).

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

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

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

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

6.	**20-20880-E-13** **DPC-1**	**PATRICIA SHIELDS** **Marc Voisenat**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK** **3-17-20 [19]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on March 17, 2020. By the court's calculation, 42 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is overruled.

The Chapter 13 Trustee, David Cusick ("Trustee"), originally filed an Objection to Confirmation on March 17, 2020. Dckt. 19. At that time, Trustee objected on the basis that Trustee had not yet been able to examine Debtor at the Meeting of Creditors due to COVID-19 and the meeting had been continued to April 16, 2020. *Id.*

On April 17, 2020, Trustee filed a Status Report. Dckt. 23. Trustee reports that Debtor appeared at the April 16, 2020 Meeting of Creditor but opposes confirmation of the Plan on the basis that:

A. No declaration from Debtor's partner has been filed regarding the $5,600.00 monthly contribution listed on Schedule I.

B. Debtor's Petition fails to list Debtor's middle name.

DISCUSSION

Debtor has addressed both of Trustee's objections. Debtor filed an Amended Petition which identifies her middle name to be Claire. Dckt. 26. Debtor also filed the Declaration of Melvin Henley where he declares that he will continue to make monthly contributions in the amount of $5,600.00 to the household to be used to pay ongoing expenses and to fund the chapter 13 plan until the case is fully funded. Dckt. 28.

The Objection is overruled.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is overruled, and Patricia Claire Shields' ("Debtor") Chapter 13 Plan filed on February 17, 2020, is confirmed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

7. **17-27988-E-13** **SHERRY EVANS** **MOTION TO MODIFY PLAN**
BLG-3 **Chad Johnson** **2-28-20 [54]**

The Court Has Posted This as a No Tentative Ruling

If the Debtor and the Trustee Have Resolved the Opposition, It May be Stated on the Record

If the Opposition Points Have Not Been Resolved, The Hearing Will be Continued With a Briefing Schedule For the Debtor to File Reply Pleadings

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 28, 2020. By the court's calculation, 60 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is xxxxx.

The debtor, Sherry L. Evans ("Debtor") seeks confirmation of the Modified Plan to accommodate for a temporary adjustment in her income due to Debtor going on medical leave from work to have surgery. Declaration, Dckt. 56. The Modified Plan provides for the following:

1. monthly payments of $683.00 for months 26-28,

2. monthly payments of $745.00 for months 29-41,

3. monthly payments of $952.00 for months 42-47,

4. monthly payments of $1,017.00 for months 48-60, and

5. a 3.91% percent dividend to unsecured claims totaling $28,016.41.

Modified Plan, Dckt. 59. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on April 6, 2020. Dckt. 62. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor may not be able to make plan payments.

B. There are issues with the exhibits filed on support of the motion.

DISCUSSION

Not Best Effort

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's modified Plan proposes to surrender the 2015 Kia Optima; however the Supplemental Schedule J continues to budget $520.00 of vehicle related costs such as insurance, registration, and transportation. Debtor does not provide an explanation for these expenses.

Additionally, Debtor declares that she is on medical leave due to surgery. Declaration, Dckt. 56. Debtor's last day working was January 13, 2020, with a tentative return date of April 2, 2020. *Id*. For the time she is on leave, Debtor will be receiving SDI benefits in the amount of $988.00 a week. *Id*. She is filing this modified plan to account for this temporary adjustment in her income. *Id.* Trustee points out that Debtor has not provided an update on surgery and whether she still has the same time line for returning to work. *Id*.

At the hearing, **xxxxxxxxxx**

~~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 the debtor, Sherry L Evans ("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 **XXXXXXXXXX** .

8.	**20-20796-E-13 DPC-1**	**JUAN HERNANDEZ AGUIRRE Gabriel Liberman**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK 3-17-20 [13]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on March 17, 2020. By the court's calculation, 42 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

The Chapter 13 Trustee, David Cusick ("Trustee"), originally filed an Objection to Confirmation on March 17, 2020. Dckt. 13. At that time, Trustee objected on the basis that Trustee had not yet been able to examine Debtor at the Meeting of Creditors due to COVID-19 and the meeting was continued to April 16, 2020. *Id*.

On April 17, 2020, Trustee filed a Status Report. Dckt. 17. Trustee reports that Debtor appeared at the April 16, 2020 Meeting of Creditor but opposes confirmation of the Plan on the basis that:

A. The proposed Plan may not be Debtor's best effort.

DISCUSSION

Trustee's objections are well-taken.

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.

On his Schedule I Projected Monthly Income and Expense Statement, Debtor estimates quarterly taxes in the amount of $1,450.00. Trustee is uncertain as to why Debtor anticipates a total of $17,400.00 in quarterly taxes annually. Debtor must explain the reasons for this estimate before the court can make a determination that the Plan is confirmable.

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

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

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

9. **19-23292-E-13 PLC-11** **THOMAS PEARSON** **Peter Cianchetta**

MOTION FOR ALLOWANCE OF PREVAILING PARTY FEES BY THE LAW OFFICE OF CIANCHETTA & ASSOCIATES FOR PETER L. CIANCHETTA, DEBTORS ATTORNEY(S)
4-14-20 [125]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on April 14, 2020. By the court's calculation, 14 days' notice was provided. 14 days' notice is required. L.B.R. 9014-1(f)(2), applicable in contested matters.

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

The Motion for Allowance of Prevailing Party Attorney's Fees is granted.

Peter Cianchetta of Cianchetta & Associates ("Movant") filed this Motion seeking prevailing party fees in the amount of $2,662.50 pursuant to FRBP §5054(b)(2) and FRCP §56(d) based on the contract between the parties.

Movant states with particularity (FED. R. BANKR. P. 9013) the following grounds in support of the Motion:

1. The Chapter 13 Debtor, Thomas Michael Pearson, objected to CACH, LLC Insurance Company's Proof of Claim on an underlying credit card debt.

2. Debtor successfully objected to the Proof of Claim. The court granted Debtor's objection to claim.

3. Debtor alleges that the credit card had an attorney's fees provision.

4. As such, since the Lender under the Contract would be awarded attorney's fees in enforcing the note, under California Civil Code § 1717, a reciprocal contractual attorneys' fees statute, Debtor is entitled to reimbursement of reasonable attorney's fees expended in bringing the objection.

5. Debtor requests the court grant judgment in his favor for the total sum of $2,662.50 ($2,287.50 plus $375.00 for the hearing) in legal fees as the prevailing party in this action.

STATUTORY BASIS FOR ATTORNEY'S FEES

The court may allow costs to the prevailing party except when a statute of the United States or these rules otherwise provides. Costs against the Unites States, its officers and agencies shall be imposed only to the extent permitted by law. Costs may be taxed by the clerk on 14 days' notice; on motion served within seven days thereafter, the action of the clerk may be reviewed by the court. *Fed. R. Bank P.* 7054(b)(1)

Contract

California Civil Code § 1717 addresses substantive state law making contractual attorney's fees provisions reciprocal, stating:

> (a) In any action on a contract, where the contract specifically provides that attorney's fees and costs, which are incurred to enforce that contract, shall be awarded either to one of the parties or to the prevailing party, then **the party who is determined to be the party prevailing on the contract, whether he or she is the party specified in the contract or not, shall be entitled to reasonable attorney's fees** in addition to other costs.
> . . .
> (b)
> (1) **The court**, upon notice and motion by a party, **shall determine** who is **the party prevailing** on the contract for purposes of this section, whether or not the suit proceeds to final judgment. Except as provided in paragraph (2) [dismissals], the **party prevailing** on the contract **shall be the party who recovered a greater relief in the action** on the contract. The court may also determine that there is no party prevailing on the contract for purposes of this section.

In this case, the Chapter 13 Debtor is the party who prevailed in litigating the CACH, LLC Insurance Company in this contested matter.

Computation of Prevailing Party Attorney's Fees

Unless authorized by statute or provided by contract, attorney's fees ordinarily are not recoverable as costs. Cal. Code Civ. Proc. § 1021; *International Industries, Inc. v. Olen*, 21 Cal. 3d 218, 221 (Cal. 1978). The prevailing party must establish that a contractual provision exists for attorney's fees and that the fees requested are within the scope of that contractual provision. *Genis v. Krasne*, 47 Cal. 2d 241 (1956).

In the Ninth Circuit, the customary method for determining the reasonableness of a professional's fees is the "lodestar" calculation. *Morales v. City of San Rafael*, 96 F.3d 359, 363 (9th Cir. 1996), amended, 108 F.3d 981 (9th Cir. 1997). "The 'lodestar' is calculated by multiplying the number of hours the prevailing party reasonably expended on the litigation by a reasonable hourly rate." *Morales*, 96 F.3d at 363 (citation omitted). "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). An attorney's fee 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 County 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). Having this discretion is appropriate "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.

DISCUSSION

The court having determined that Movant is the prevailing party and that California Civil Code § 1717 provides that the prevailing party shall be awarded attorneys' fees, the court determines that the requested $2,662.50 in attorneys' fees is reasonable in this Contested Matter for services provided in litigating the Proof of Claim objection against Creditor CACH, LLC Insurance Company

Applying the normal lodestar analysis, the court begins with the billing rates for the attorneys for which the attorneys' fees are requested. The hourly rates for the work done by the attorney at $375.00 an hour are reasonable. They are very moderate when considering the regular billing rates in the community, as well as commensurate with the level of legal experience for Debtor's Attorney. The court has reviewed the billings records for the time spent working on the matter. They are reasonable as well.

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 Prevailing Party Fees filed by the Chapter 13 Debtor's Attorney, Peter Cianchetta of Cianchetta & Associates, ("Movant"), in this Contested Matter and prevailing party on appeal having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and

good cause appearing.

IT IS ORDERED that Movant, is awarded prevailing party attorney's fees against CACH, LLC Insurance Company, Creditor, in the amount of $2,662.50 pursuant to California Civil Code § 1717.

10. 16-24697-E-13 SLH-1 — ANDREA PATTON — Seth Hanson — MOTION TO SELL — 3-13-20 [32]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on March 13, 2020. By the court's calculation, 46 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion to Sell Property 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 Sell Property is granted.

The Bankruptcy Code permits Andrea Jenifer Patton, Chapter 13 Debtor, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here, Movant proposes to sell the real property commonly known as 7243 Starflower Drive, Citrus Heights, California ("Property").

The proposed purchaser of the Property is David and Annie Byron, and the terms of the sale are:

A. Purchase price of $378,000.00.

B. Initial deposit of $5,000.00.

C. Simplisafe system and TV brackets to be removed and excluded from the sale.

D. Property is sold "AS IS," unless otherwise agreed in writing.

E. Items included in the sale: stove, refrigerator, and dishwasher.

F. Seller to pay for the following: natural hazard zone disclosure report; smoke alarm and carbon dioxide device installation; standard one-year home warranty plan, not to exceed $550.00; county transfer tax or fee; and owner's title insurance.

G. Escrow holder to be selected by seller.

H. Buyer and Seller to pay escrow fees 50/50 split.

I. Escrow to close 30 days after acceptance.

DISCUSSION

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because the sale will allow Debtor to pay the loan, put excess proceeds of $70,500.00 into the Chapter 13 Plan, and pay 100% of all unsecured claims in her case.

Movant has estimated that a four (4) percent broker's commission from the sale of the Property will equal approximately $9,450.00. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker an amount not more than four (4) percent commission.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Sell Property filed by Andrea Jenifer Patton, Chapter 13 Debtor, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Andrea Jenifer Patton, Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to David and Annie Byron or nominee ("Buyer"), the Property commonly known as 7243 Starflower Drive, Citrus Heights, California ("Property"), on the following terms:
>
> A. The Property shall be sold to Buyer for $378,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 35, and as further provided in this Order.
>
> B. The sale proceeds shall first be applied to closing costs, real

estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.

C. Chapter 13 Debtor is authorized to execute any and all documents reasonably necessary to effectuate the sale.

D. Chapter 13 Debtor is authorized to pay a real estate broker's commission in an amount not more than 4% percent of the actual purchase price upon consummation of the sale. The 4% percent commission shall be paid to Chapter 13 Debtor's, Angela Moore of Excel Realty.

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

11. **20-20430-E-13 BLG-2** **11 thru 18**

RAFAEL DE LA TORRE
Chad Johnson

MOTION TO VALUE COLLATERAL OF INDEPENDENCE BANK
3-31-20 [25]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on March 31, 2020. By the court's calculation, 28 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 Independence Bank ("Creditor") is dismissed without prejudice.

The Motion filed by Rafael Palos De La Torre ("Debtor") to value the secured claim of Independence Bank ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 49. The Motion states that the claim is secured by all business equipment, inventory, accounts & instruments of a third-party, Los Arcos Livestock Feed Store, LLC. Motion, ¶ 2; Dckt. 25.

The Motion states that Debtor operated his business as a sole proprietorship in 2012, created a Limited Liability Company in 2016, and then on November 30, 2019, terminated the Limited Liability Company. Motion, ¶ 3; *Id.*

The Motion alleges that the assets listed on Schedules A/B were secured by the claim of Yuba-Sutter (Proof of Claim No. 6), and that Creditor's debt was secured by the assets of the Limited Liability Company, so there is $0.00 of collateral for Creditor's claim in this case.

Declaration of Debtor Rafael Palos De La Torre

Debtor declares under penalty of perjury the following:

1. Debtor started his business as a sole proprietorship on July 2, 2012. Declaration, ¶ 3; Dckt. 27.

2. He later created the LLC on November 1, 2016, which was terminated on November 30, 2019. *Id.*

3. He has always filed taxes as a sole proprietor. *Id.*

4. It is Debtor's position that the assets listed in Schedule A/B, as of the date of filing, were properly secured by the claim of Creditor Yuba-Sutter Economic Development Corp. (Proof of Claim No. 6). *Id.*

5. Creditor's secured claim (Proof of Claim No. 3) was secured to the assets of the LLC and not to the assets of the Sole Proprietorship and therefore has a secured value of $0.00 in this case. *Id.*

This Declaration is a strange mix of some facts for which the Debtor would have personal knowledge and his legal conclusions and assertions.

Independence Bank Proof of Claim 3-1

Creditor filed Proof of Claim 3-1 on February 25, 2020. The Proof of Claim includes the following information and claim asserted:

A. The amount of the claim is $123,343.42, all of which is stated to be secured. Proof of Claim 3-1, ¶ 9.

B. The claim is secured by "Equipment, Inventory, Account, Instruments[.]" *Id.*

C. The basis for perfection is the UCC Financing Statement filed as an attachment to the proof of claim. *Id.*

D. The Attachment to Proof of Claim 3-1 includes:

1. A U.S. SBA Note in the amount of $150,000.00, for which the loan was made to Los Arcos Livestock Feed Store, LLC. Attachment, p. 2.

2. The date of the SBA Note is March 8, 2017. *Id.*, p. 7.

3. The Note is signed by Rafael Palos De La Torre (the Debtor) as the representative of Los Arcos Livestock Feed Store, LLC.

4. A US SBA Security Agreement dated March 9, 2017 to secure the SBA Note. *Id.*, p. 8.

a. Los Arcos Livestock Feed Store, LLC grants Creditor a security interest in Equipment, Fixtures, Inventory, Accounts,

Instruments, Chattel Paper, General Intangibles, and Documents. *Id.*, p. 9.

b. The Security Agreement contains an express restriction on Los Arcos Livestock Feed Store, LLC from transferring any of the collateral in which Creditor was given a security interest, stating:

> 5. RESTRICTIONS ON COLLATERAL TRANSFER.
>
> [Los Arcos Livestock Feed Store, LLC] will not sell, lease, license or otherwise transfer (including by granting security interests, liens, or other encumbrances in) all or any part of the Collateral or [Los Arcos Livestock Feed Store, LLC]'s Interest in the Collateral without Secured Party's written or electronically communicated approval, except that [Los Arcos Livestock Feed Store, LLC] may sell inventory in the ordinary course of business on customary terms.
>
> [Los Arcos Livestock Feed Store, LLC] may collect and use amounts due on accounts and other rights to payment arising or created in the ordinary course of business, until notified otherwise by Secured Party in writing or by electronic communication.

Id.

c. The Security Agreement is signed by Rafael Palos De La Torre (the Debtor) as the representative of Los Arcos Livestock Feed Store, LLC.

5. The Debtor also signed an Unconditional Guaranty of the obligation owed by Los Arcos Livestock Feed Store, LLC on the SBA Note. *Id.*, pp. 12-16.

6. A UCC Financing Statement with a filing date of March 9, 2017, naming Los Arcos Livestock Feed Store, LLC, as the "debtor" granting the security interest and Creditor as the party with the security interest in the property. *Id.*, p. 19. On the second page of the Financing Statement is a description of the collateral, which is consistent with the description in the Security Agreement. *Id.*, p. 20.

Proof of Claim No. 6-1
Filed by Yuba-Sutter Economic Development Corp.

Proof of Claim No. 6-1 filed by Yuba-Sutter Economic Development Corp. ("Yuba-Sutter") states it has a secured claim for $83,059.00, stating that the collateral is real estate and a "2015 utility trailer, inventory, accounts, equipment, etc." Proof of Claim 6-1, ¶¶ 8,9.

Attached to Proof of Claim No. 6-1 is a Promissory Note, with the borrower identified as Rafael Palos De La Torre DBA: Los Arcos Livestock Feed Store. *Id.*, pp. 34-35. This Note is dated November 2, 2017 - which is eight months after the SBA Note above.

Also attached is a Commercial Security Agreement, which is dated November 2, 2017. *Id.*, pp. 26-31. It states that the Debtor personally granted a security interest in the utility trailer and "All Inventory, Chattel Paper, Accounts, Equipment, General Intangibles and Fixtures." *Id.*, p. 26.

No copy of a financing statement is attached to Proof of Claim No. 6-1.

DISCUSSION

Trustee filed a Response on April 14, 2020. Dckt. 63. Trustee points out that Debtor has failed to address whether the LLC has or had assets, and what became of any assets once the LLC was terminated. *Id.* Trustee further adds that it appears that Debtor is asserting that the LLC had no assets or that the perfected senior lien exists as to each of the assets which exhaust the value of all assets. Adding that, and the court agrees, that Debtor's statements regarding which creditor properly secured their claims are conclusory.

Here are Debtor's statements in his Declaration as compared to the Motion:

Declaration	**Motion**
I started my business as a sole proprietorship on 7/2/2012.	Debtor started his business as a sole proprietorship on 7/2/2012.
I created the LLC on 11/1/2016 and terminated the LLC on 11/30/2019.	He created the LLC on 11/1/2016 and terminated the LLC on 11/30/2019.
I have always filed taxes as a sole proprietor.	Debtor has always filed taxes as a sole proprietor.
It is my position that the assets listed in Schedule A/B, as of the date of filing, were properly secured by the claim of Yuba-Sutter (Claim No. 6).	It is the position of the Debtor that the assets listed in Schedule A/B, as of the date of filing, were properly secured by the claim of Yuba-Sutter (Claim No. 6).
Independence Bank's secured claim (Claim No. 3) was secured to the assets of the LLC and not to the assets of the Sole Proprietorship and therefore has a secured value of $0.00 in this case.	Independence Bank's secured claim (Claim No. 3) was secured to the assets of the LLC and not to the assets of the Sole Proprietorship and therefore has a secured value of $0.00 in this case.

This is the exact same wording used in the Motion, except for the changes in pronouns.

Debtor provides no reasoning as to why it is his "position" that Creditor Yuba-Sutter properly secured its claim or how he reached the conclusion that Creditor's Independence Bank's secured claim was secured to the LLC assets and once the LLC was dissolved its debts went away with it.

Debtor's Amended Schedule A/B totals his property at $1,350,707.60. Dckt. 91.

DISMISSAL OF MOTION

The present Motion and Declaration bring to light some "interesting," and troubling issues for this case. They also show that this Motion is procedurally improper and must be dismissed without prejudice.

Proof of Claim No. 3-1 is based on an SBA loan obtained by Los Arcos Livestock Feed Store, LLC for $150,000.00 on March 9, 2017. Then, eight months later Debtor personally represents that Los Arcos Livestock Feed Store is his DBA and obtains a loan for $97,500.00 from the Yuba-Sutter Economic Development Corp., giving a security interest in the assets of the Los Arcos Livestock Feed Store.

Debtor now provides testimony under penalty of perjury that he "started my business" (but does not identify what is "my business") on July 2, 2012. He then testifies under penalty of perjury that he created "the LLC" (without identifying the limited liability company) on November 1, 2016, and then terminated the "LLC" on November 30, 2019.

Though having created an LLC, Debtor testifies that "I have always filed taxes as a sole proprietor." If there was a limited liability company doing business and obtaining $150,000 SBA loans, then that limited liability company necessarily was filing tax returns, even if the tax consequences flowed through to the members as they would for a partnership.

According to the California Secretary of State Department, Debtor's LLC was dissolved and a certificate of cancellation for the LLC's Termination was filed on November 30, 2020. https://businesssearch.sos.ca.gov/CBS/Detail.

The substance of this Motion is that Debtor asserts that the assets which Creditor identifies as collateral for Proof of Claim No. 3-1, assets of Los Arcos Livestock Feed Store, LLC, to secure the $150,000 SBA loan that Debtor, as the Member, obtained for Los Arcos Livestock Feed Store, LLC in March 2017, were and are really Debtor's personal assets. And that eight months after getting the $150,000 SBA loan, for which the assets were represented as being that of Los Arcos Livestock Feed Store, LLC, Debtor then went to the Yuba-Sutter Economic Development Corp. to get a $97,500.00 loan personally, using the same assets to secure his personal loan.

It is not a valuation issue under 11 U.S.C. § 506(a) presented to the court, but a required determination of the ownership of the assets and determination of the extent, validity, priority, and amount of the liens and interests in the property of the Debtor and the two creditors. The Supreme Court requires that such matters be determined by Adversary Proceeding. Fed. R. Bankr. P. 7001(2).

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 Rafael Palos De La Torre ("Debtor") having been presented to the court, and upon review of

the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is dismissed without prejudice.

12.	**20-20430-E-13** **BLG-9**	**RAFAEL DE LA TORRE** **Chad Johnson**	**MOTION TO VALUE COLLATERAL OF FUNDING METRICS, LLC** **3-31-20 [47]**

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

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, Creditor, parties requesting special notice, and Office of the United States Trustee on March 31, 2020. By the court's calculation, 28 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 Funding Metrics, LLC ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $0.00.

The Motion filed by Rafael Palos De La Torre ("Debtor") to value the secured claim of Funding Metrics, LLC ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 49. Debtor is the owner of the following business assets:

a. 2015 Utility Car Trailer - $1,500
b. Union Bank...9612 Business Checking Acct. - $1,018.84
c. US Bank...8950 Business Checking Acct. - $0.34
d. Tri Counties Bank ... 4067 Business Checking Acct. - $50.00
e. Union Bank...2344 Business Checking Acct. - $30.70
f. Tri Counties Bank ... 8766 Business Checking Acct. - $4,990.93
g. Inventory - $27,910.68
h. Machinery - $1,000.00

i. Office Equipment - $500.00

("Property"). Debtor seeks to value the Property at a replacement value of $37,051.49 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).

Debtor values the Property at $37,051.49. Debtor argues that the value of the Creditor is $0.00 on the basis that Creditor Yuba-Sutter Economic Development Corp has a superior lien in the amount of $83,059.00. Proof of Claim No. 6. Thus, there is no equity in the Property for Creditor's claim.

The lien on the Property secures a non-purchase-money security interest perfected by the filing of a UCC Financing Statement was incurred on May 1, 2018, which is more than one year prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $11,366.83. Proof of Claim, No. 7-1. 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 $0.00, ~~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.

In granting this Motion, the court makes no determination of whether the Debtor actually owns the property or that the Yuba-Sutter Economic Development Corporation lien is the "superior lien on the property."

The Creditor, apparently recognizing that whomever the senior creditor(s) were, Creditor's lien interest was out of the money. Creditor failed to opposed the Motion and its default has been taken.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Value Collateral and Secured Claim filed by Rafael Palos De La Torre ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Funding Metrics, LLC ("Creditor") secured by an asset described as
>
> a. 2015 Utility Car Trailer - $1,500
> b. Union Bank...9612 Business Checking Acct. - $1,018.84
> c. US Bank...8950 Business Checking Acct. - $0.34
> d. Tri Counties Bank ... 4067 Business Checking Acct. - $50.00
> e. Union Bank...2344 Business Checking Acct. - $30.70
> f. Tri Counties Bank ... 8766 Business Checking Acct. - $4,990.93
> g. Inventory - $27,910.68
> h. Machinery - $1,000.00
> I. Office Equipment - $500.00

("Property") is determined to be a secured claim in the amount of $0.00, 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 $37,051.49 and is encumbered by a superior lien securing a claim that exceeds the value of the asset.

13. 20-20430-E-13 BLG-3 — RAFAEL DE LA TORRE — Chad Johnson — MOTION TO VALUE COLLATERAL OF YUBA-SUTTER ECONOMIC DEVELOPMENT CORP. — 3-31-20 [29]

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

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, Creditor, parties requesting special notice, and Office of the United States Trustee on March 31, 2020. By the court's calculation, 28 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 Yuba-Sutter Economic Development Corp. ("Creditor") is dismissed without prejudice.

The Motion filed by Rafael Palos De La Torre ("Debtor") to value the secured claim of Yuba-Sutter Economic Development Corp. ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 31. Debtor is the owner of the following business assets:

a. 2015 Utility Car Trailer - $1,500
b. Union Bank...9612 Business Checking Acct. - $1,018.84
c. US Bank...8950 Business Checking Acct. - $0.34
d. Tri Counties Bank ... 4067 Business Checking Acct. - $50.00

e. Union Bank...2344 Business Checking Acct. - $30.70
f. Tri Counties Bank ... 8766 Business Checking Acct. - $4,990.93
g. Inventory - $27,910.68
h. Machinery - $1,000.00
I. Office Equipment - $500.00

("Property"). Debtor seeks to value the Property at a replacement value of $37,051.49 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

DISCUSSION

The lien on the Property secures a non-purchase-money security interest incurred on November 2, 2017, which is more than one year prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $83,059.00. Proof of Claim, No. 6. The claim is perfected by a Commercial Security Agreement and deeds of trust. *Id.* at 2. Creditor's attached two recorded deeds of trust. The first recorded deed of trust is over Debtor's property commonly known as 2684 Highway 20, Marysville, California. *Id.* at p. 5. The second recorded deed of trust is over Debtor's property commonly known as 8162 Hallwood Blvd., Marysville, California. *Id.* at p. 17. Creditor also attached the Commercial Security Agreement executed between Creditor and Debtor granting the security interest over the Property: specifically, the 2015 Carry Utility Trailer, all inventory, chattel paper, accounts, equipment, general intangibles and fixtures. *Id.* at p. 26.

Trustee filed an Opposition on April 14, 2020. Dckt. 65. Trustee opposes on the basis that:

A. Debtor filed three separate motions to value Claim No. 6 rather than one motion which creates procedural issues:

1. Motion DCN: BLG-3 (Dckt. 29) seeking to value "all business equipment, inventory, accounts, and instruments" at $37,051.49 and seeks an order that the secured claim is that amount.

2. Motion DCN: BLG-4 (Dckt. 32) seeking to value "Debtor's residence" at $405,000.00 and seeks to value the collateral held by Creditor at $39,046.22 based on superior lien balance.

3. Motion DCN: BLG-5 (Dckt. 59) seeking to value "Debtor's business property" at $462,500.00 and seeks to value the collateral held by Creditor at $0.00 based on superior lien balance.

4. The Creditor has filed Claim 6 for $83,059.00 as secured by real estate and business assets. As the Trustee understands the relief requested, Debtor is attempting to value Claim 6 for $76,097.71 (the sum of $37,051.49 and $39,046.22).

B. Debtor does not address in this motion that other lien claimants may

> exist to the business assets, as set forth in Debtor's other Motions to Value (Dckt. 25, DCN: BLG-2; Dckt. 47, DCN: BLG-9).
>
> Adding that Debtor may need to address issues of lien priority and perfection if any.

Id.

On April 21, 2020, Debtor filed a Reply, the Declaration of Chad Johnson ("Debtor's Counsel"), and three exhibits addressing Trustee's objection regarding other lien claimants. Dckts. 79, 80, 81. Debtor responds as follows:

> A. Creditor Independence Bank filed a UCC Financing Statement on March 9, 2017 which secured to various assets belonging to "Los Arcos Livestock Feed Store, LLC." (See Exhibit A)
>
> B. As stated in Debtor's Declaration for BLG-2 (Motion to Value Creditor Investment Bank's secured claim), it is Debtor's position that "the assets listed in Schedule A/B, as of the date of filing, were properly secured by the claim of Yuba-Sutter (Claim No. 6). Independence Bank's secured claim (Claim No. 3) was secured to the assets of the LLC and not to the assets of the Sole Proprietorship and therefore has a secured value of $0.00 in this case."
>
> C. Yuba-Sutter Economic Development Corp. filed a UCC Financing Statement on November 8, 2017 (See Exhibit B).
>
> D. Funding Metrics, LLC filed a UCC Financing Statement on August 7, 2018 (See Exhibit C).

Debtor's Counsel declares under penalty of perjury that he performed the search of UCC filings with the California Secretary of State and also performed a name inquiry with the Yuba County Recorder's Office. Counsel then proceeds to repeat the same exact four statements as stated above from the Reply. Dckt. 80.

Dismissal Without Prejudice

The present Motion and the Motion and Supporting Declaration to value the secured claim of Independence Bank (DCN: BLG-2) bring to light some "interesting," and troubling issues for this case. They also show that this Motion is procedurally improper and must be dismissed without prejudice.

Proof of Claim No. 3-1 is based on an SBA loan obtained by Los Arcos Livestock Feed Store, LLC for $150,000.00 on March 9, 2017. Then, eight months later Debtor personally represents that Los Arcos Livestock Feed Store is his DBA and obtains a loan for $97,500.00 from the Yuba-Sutter Economic Development Corp., giving a security interest in the assets of the Los Arcos Livestock Feed Store.

Debtor now provides testimony under penalty of perjury that he "started my business" (but

does not identify what is "my business") on July 2, 2012. He then testifies under penalty of perjury that he created "the LLC" (without identifying the limited liability company) on November 1, 2016, and then terminated the "LLC" on November 30, 2019.

Though having created an LLC, Debtor testifies that "I have always filed taxes as a sole proprietor." If there was a limited liability company doing business and obtaining $150,000 SBA loans, then that limited liability company necessarily was filing tax returns, even if the tax consequences flowed through to the members as they would for a partnership.

According to the California Secretary of State Department, Debtor's LLC was dissolved and a certificate of cancellation for the LLC's Termination was filed on November 30, 2020. https://businesssearch.sos.ca.gov/CBS/Detail.

The substance of this Motion is that Debtor asserts that the assets which Creditor identifies as collateral for Proof of Claim No. 3-1, assets of Los Arcos Livestock Feed Store, LLC, to secure the $150,000 SBA loan that Debtor, as the Member, obtained for Los Arcos Livestock Feed Store, LLC in March 2017, were and are really Debtor's personal assets. And that eight months after getting the $150,000 SBA loan, for which the assets were represented as being that of Los Arcos Livestock Feed Store, LLC, Debtor then went to the Yuba-Sutter Economic Development Corp. to get a $97,500.00 loan personally, using the same assets to secure his personal loan.

It is not a valuation issue under 11 U.S.C. § 506(a) presented to the court, but a required determination of the ownership of the assets and determination of the extent, validity, priority, and amount of the liens and interests in the property of the Debtor and the two creditors. The Supreme Court requires that such matters be determined by Adversary Proceeding. Fed. R. Bankr. P. 7001(2).

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 Rafael Palos De La Torre ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is dismissed without prejudice.

14. **20-20430-E-13 BLG-4** **RAFAEL DE LA TORRE** **Chad Johnson** **MOTION TO VALUE COLLATERAL OF YUBA-SUTTER ECONOMIC DEVELOPMENT CORP.** **3-31-20 [32]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on March 31, 2020. By the court's calculation, 28 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 the portion of the Secured Claim of Yuba-Sutter Economic Development Corp. ("Creditor") is dismissed without prejudice.

The Motion to Value filed by Rafael Palos De La Torre ("Debtor") to value a portion of the collateral securing the claim of Yuba-Sutter Economic Development Corp. ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 34. Debtor resides at the subject real property commonly known as 2684 Highway 20, Marysville, California ("Property"). Debtor's girlfriend is the sole person on the mortgage against the Property purchased on July 27, 2006. Debtor asserts that the fair market value of the Property is $405,000.00 as of the petition filing date. Debtor seeks to value Creditor's secured claim at $39,046.22 which is the remaining equity after subtracting the superior lien over the property in the amount of $365,953.76.

As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

DISCUSSION

The lien on the Property secures a non-purchase-money security interest incurred on November 2, 2017, which is more than one year prior to filing of the petition, to secure a debt owed to

Creditor with a balance of approximately $83,059.00. Proof of Claim, No. 6. The claim is perfected by a Commercial Security Agreement and deeds of trust. *Id.* at 2. Creditor's attached two recorded deeds of trust. The first recorded deed of trust is over Debtor's property commonly known as 2684 Highway 20, Marysville, California. *Id.* at p. 5. The second recorded deed of trust is over Debtor's property commonly known as 8162 Hallwood Blvd., Marysville, California. *Id.* at p. 17. Creditor also attached the Commercial Security Agreement executed between Creditor and Debtor granting the security interest over the Property: specifically, the 2015 Carry Utility Trailer; all inventory, chattel paper, accounts, equipment, general intangibles and fixtures. *Id.* at p. 26.

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

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

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

OPPOSITION

Creditor has not filed an Opposition to the instant motion. Trustee filed an Opposition on April 14, 2020. Dckt. 68. Trustee opposes on the basis that:

A. Debtor filed three separate motions to value Claim No. 6 rather than one motion which creates procedural issues:

1. Motion DCN: BLG-3 (Dckt. 29) seeking to value "all business equipment, inventory, accounts, and instruments" at $37,051.49 and seeks an order that the secured claim is that amount.

2. Motion DCN: BLG-4 (Dckt. 32) seeking to value "Debtor's residence" at $405,000.00 and seeks to value the collateral held by Creditor at $39,046.22 based on superior lien balance.

3. Motion DCN: BLG-5 (Dckt. 59) seeking to value "Debtor's business property" at $462,500.00 and seeks to value the collateral held by Creditor at $0.00 based on superior lien

balance.

4. The Creditor has filed Claim 6 for $83,059.00 as secured by real estate and business assets. As the Trustee understands the relief requested, Debtor is attempting to value Claim 6 for $76,097.71 (the sum of $37,051.49 and $39,046.22).

B. Debtor maintains that superior liens to the collateral total $365,953.76. Where Debtor maintains he is not on this loan (Schedule D, Dckt. 1 at p. 27, Creditor 2.6 description), Debtor has not explained how he has established the amount owed.

Id.

Debtor filed a Reply, the Declaration of Carmen J. Lucatero ("Debtor's Girlfriend"), and one exhibit addressing Trustee's objection regarding the senior lien over the Property. Dckt. 94, 95, 96. Debtor responds as follows:

A. Debtor's girlfriend, Carmen J. Lucatero is the only one on the mortgage against Debtor's residence located at 2684 Hwy 20, Marysville, CA 95901. Said residence was purchased on July 27, 2006. The balance as of the date of filing was $365,953.78 (See Exhibit A – A True & Correct Copy of January's Mortgage Statement).

Ms. Lucatero declares under penalty of perjury that she is Debtor's girlfriend and that she is "the sole person on the PHH Mortgage, which is the mortgage against our residence located at 2684 Hwy 20, Marysville, CA 95901, which we Ppurchased (sic) on July 27, 2006. The balance is January was $365,953.78 (See Exhibit A – A True & Correct Copy of January's Mortgage Statement).

Exhibit A is a properly authenticated copy of the January Mortgage Statement. Dckt. 96. According to the statement, the balance owed on this mortgage is $365,953. 78. Exhibit, at p. 3.

DECISION

On Schedule A/B, Debtor lists the Property as being owned by Debtor and at least one other person. It is stated that the "Mortgage" is in the Debtor's girlfriend's name. On Schedule A/B Debtor states that the value of his interest in the Property is the dollar amount stated as the value of the Property - $458,721.00. There is not a mere fractional interest of the Property that is included in this bankruptcy case. Dckt. 1 at 11.

On Schedule D Debtor lists a claim for PHH Mortgage Services (secured claim no. 2.6), but lists the claim being $0.00, stating that Debtor is not on the loan.

A review of the Verification of Master Address List signed by the Debtor under penalty of perjury discloses that PHH Mortgage Services, the creditor identified as having a lien on the Property, 100% of which is included in this bankruptcy case, is not included and has not been provided notice of this bankruptcy case.

Though Debtor provides his legal conclusion that PHH Mortgage Services is not a creditor because his girlfriend signed the note, the Bankruptcy Code states otherwise. The term claim is defined in 11 U.S.C. § 101(5) as:

> (5) The term "claim" means—
>
> (A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or
>
> (B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

As discussed by the Supreme Court in *Johnson v. Home State Bank*, even when the debtor does not have personal liability on the obligation, the rights in the property remain a claim in the bankruptcy case.

> Section 502(b)(1), for example, states that the bankruptcy court "shall determine the amount of [a disputed] claim . . . and shall allow such claim in such amount, except to the extent that . . . such claim is unenforceable against the debtor *and property of the debtor*" (emphasis added). In other words, **the court must allow the claim if it is enforceable against either** the debtor or **his property**. Thus, § 502(b)(1) contemplates circumstances in which a "claim," like the mortgage lien that passes through a Chapter 7 proceeding, may consist of nothing more than an obligation enforceable against the debtor's property. Similarly, § 102(2) establishes, as a "rule of construction," that the phrase "'**claim against the debtor' includes claim against property of the debtor**." A fair reading of § 102(2) is that a creditor who, like the Bank in this case, has a **claim enforceable only against the debtor's property nonetheless has a "claim against the debtor" for purposes of the Code**.

Johnson v. Home State Bank, 501 U.S. 78, 85 (1991).

The court notes that Debtor appears to recognize PHH as a "creditor." On Schedule J, Debtor lists having to make a monthly mortgage payment of $2,019.17. Dckt. 1 at 50. This is exactly the amount shown on the Monthly Mortgage Statement that is filed as an Exhibit A (Dckt. 96) with the Declaration of Carmen Lucatero, the Debtor's girlfriend.

Additionally, Debtor lists as a dependent the "Girlfriend." No contribution made to Debtor for the Girlfriend's expenses is shown on Schedule I. Dckt. 1 at 48-49. On Schedule J Debtor states that "Girlfriend" makes on average $1,000 a month net, but is assisting two daughters in school and has some of her own non-household expenses, so is not contributing to their household unit expenses.

Thus, there is at least one empty seat at the table to determine the claims encumbering this property - PHH Mortgage Services.

Improper Bifurcation of Secured Claim Valuation

Creditor has one obligation, that being on the November 2017 note. That obligation is secured by a number of items, consisting of real property and personal property. The Bankruptcy Code provides that the allowed claim of a creditor secured by a lien on property in which the estate has an interest can be bifurcated into a secured claim and an unsecured claim. 11 U.S.C. § 506(a). "The secured claim in that portion of the allowed claim is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property." All of the property subject to the creditor's lien is valued, and then the value of the creditor's lien (after taking into account senior liens) is determined. The creditor then has one secured claim.

Debtor through this Motion, the Motion to separate value a secured claim based on the value of the personal property collateral (DCN: BLG-3), and a third motion to have a separately valued secured claim for which the collateral is another piece of real property (DCN: BLG-5), Debtor is improperly attempting to take one allowed claim and make it into three separate secured claims.

The Motion to Value the personal property securing this Creditor's claim has hit a roadblock in that Debtor has documented for the court that there is an outstanding dispute over the validity, extent, priority and amount of the liens and interests in the personal property. Until the adversary proceeding is filed, prosecuted, and concluded determining those interests, the secured claims for the creditors cannot be determined.

In connection with the Motion to Value the Secured Claim on Independence Bank and the Motion to Value the Secured Claim of Yuba-Sutter Economic Development Corp, the court notes as follows. The present Motion and the Motion and Supporting Declaration to value the secured claim of Independence Bank (DCN: BLG-2) bring to light some "interesting," and troubling issues for this case. They also show that this Motion is procedurally improper and must be dismissed without prejudice.

Proof of Claim No. 3-1 is based on an SBA loan obtained by Los Arcos Livestock Feed Store, LLC for $150,000.00 on March 9, 2017. Then, eight months later Debtor personally represents that Los Arcos Livestock Feed Store is his DBA and obtains a loan for $97,500.00 from the Yuba-Sutter Economic Development Corp., giving a security interest in the assets of the Los Arcos Livestock Feed Store.

Debtor now provides testimony under penalty of perjury that he "started my business" (but does not identify what is "my business") on July 2, 2012. He then testifies under penalty of perjury that he created "the LLC" (without identifying the limited liability company) on November 1, 2016, and then terminated the "LLC" on November 30, 2019.

Though having created an LLC, Debtor testifies that "I have always filed taxes as a sole proprietor." If there was a limited liability company doing business and obtaining $150,000 SBA loans, then that limited liability company necessarily was filing tax returns, even if the tax consequences flowed through to the members as they would for a partnership.

According to the California Secretary of State Department, Debtor's LLC was dissolved and a certificate of cancellation for the LLC's Termination was filed on November 30, 2020. https://businesssearch.sos.ca.gov/CBS/Detail.

The substance of this Motion is that Debtor asserts that the assets which Creditor identifies as collateral for Proof of Claim No. 3-1, assets of Los Arcos Livestock Feed Store, LLC, to secure the $150,000 SBA loan that Debtor, as the Member, obtained for Los Arcos Livestock Feed Store, LLC in March 2017, were and are really Debtor's personal assets. And that eight months after getting the $150,000 SBA loan, for which the assets were represented as being that of Los Arcos Livestock Feed Store, LLC, Debtor then went to the Yuba-Sutter Economic Development Corp. to get a $97,500.00 loan personally, using the same assets to secure his personal loan.

The court dismisses without prejudice this Motion as premature and an improper attempt to create multiple secured claims from one allowed claim in violation of 11 U.S.C. § 506(a).

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Value Collateral and Secured Claim filed by Rafael Palos De La Torre ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is dismissed without prejudice.

15. **20-20430-E-13 BLG-5** | **RAFAEL DE LA TORRE** **Chad Johnson** | **MOTION TO VALUE COLLATERAL OF YUBA-SUTTER ECONOMIC DEVELOPMENT CORP.** **4-2-20 [59]**

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

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

Sufficient Notice Not Provided. No Proof of Service was filed in support of service of the Motion and supporting pleadings. Thus, the court is unable to determine whether this motion was properly noticed and served.

The Motion to Value Collateral and Secured Claim of Yuba-Sutter Economic Development Corp. ("Creditor") is dismissed without prejudice.

The Motion to Value filed by Rafael Palos De La Torre ("Debtor") to value the secured claim of Yuba-Sutter Economic Development Corp. ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 61. Debtor is the owner of the subject real property commonly known as 8162 Hallwood Blvd. Marysville, California ("Property"). Debtor seeks to value the Property at $462,500.00 as of the petition filing date. Debtor seeks to value Creditor's secured claim at $0.00 on the basis that after subtracting the superior lien in the amount of $492,301.19, there is no remaining equity in the Property. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

INSUFFICIENT NOTICE OF MOTION

Debtor failed to file a Proof of Service and thus, the court is unable to determine whether proper notice of service was actually provided.

Though correction of this oversight might be addressed, as set forth below, this Motion is dismissed without prejudice.

DISCUSSION

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

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

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

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

OPPOSITION

Creditor has not filed an Opposition.

Trustee filed an Opposition on April 14, 2020. Dckt. 71. Trustee opposes on the basis that:

A. Debtor filed three separate motions to value Claim No. 6 rather than one motion which creates procedural issues:

1. Motion DCN: BLG-3 (Dckt. 29) seeking to value "all business equipment, inventory, accounts, and instruments" at $37,051.49 and seeks an order that the secured claim is that amount.

2. Motion DCN: BLG-4 (Dckt. 32) seeking to value "Debtor's residence" at $405,000.00 and seeks to value the collateral held by Creditor at $39,046.22 based on superior lien balance.

3. Motion DCN: BLG-5 (Dckt. 59) seeking to value "Debtor's business property" at $462,500.00 and seeks to value the collateral held by Creditor at $0.00 based on superior lien balance.

4. The Creditor has filed Claim 6 for $83,059.00 as secured by real estate and business assets. As the Trustee understands the relief requested, Debtor is attempting to value Claim 6 for $76,097.71 (the sum of $37,051.49 and $39,046.22).

B. Debtor maintains that superior liens to the collateral total $492,301.19. Where Debtor intends to pay the superior lien claim as a Class 4 (Dckt. 22, p. 7), and no claim has been filed to date, Debtor has not explained how he has established the amount owed.

Id.

Debtor filed a Reply, the Declaration of Rafael Palos De La Torre ("Debtor"), and one exhibit addressing Trustee's objection regarding the senior lien over the Property. Dckt. 85, 86, 87. Debtor responds as follows:

A. Debtor's business property located at 8162 Hallwood Blvd. Marysville, CA 95901 was purchased on September 23, 2016. The balance owed to Bill Thompson as the time of filing was $493,942.65 (See Exhibit A - A True & Correct Copy of Balance Sheet).

Debtor declares under penalty of perjury that:

A. His business property located at 8162 Hallwood Blvd. Marysville, CA 95901 was purchased on September 23, 2016.

B. He does not receive mortgage statement from Bill Thompson.

C. His accountant keeps a running balance sheet.

D. The balance owed to Bill Thompson as the time of filing was $493,942.65 (See Exhibit A - A True & Correct Copy of Balance Sheet).

Exhibit A is a copy of the Balance Sheet. Dckt. 86. According to the sheet, the balance owed on this debt as of January 15, 2020 is $492,301.19. Exhibit, at p. 3.

DISCUSSION

For this property, it is asserted that a person named "Bill Thompson" has a claim in the amount of $492,301.19 that is secured by a senior lien on this Property. A Bill Thompson is listed on Schedule D as having such a claim. Dckt. 1 at 25. Bill Thompson is also included on the Verification of Master Address List filed by Debtor. Dckt. 5 at 2.

However, no "Bill Thompson" has filed a proof of claim in this case. Absent Mr. Thompson filing a proof of claim, he cannot be paid on his represented secured claim. Though the case has been pending since January 27, 2020, the court finds it curious that someone who is owed half a million dollars does not file a claim and to make sure he is being paid.

Improper Bifurcation of Secured Claim Valuation

Creditor has one obligation, that being on the November 2017 note. That obligation is secured by a number of items, consisting of real property and personal property. The Bankruptcy Code provides that the allowed claim of a creditor secured by a lien on property in which the estate has an

interest can be bifurcated into a secured claim and an unsecured claim. 11 U.S.C. § 506(a). "The secured claim is that portion of the allowed claim is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property." All of the property subject to the creditor's lien is valued, and then the value of the creditor's lien (after taking into account senior liens) is determined. The creditor then has one secured claim.

Debtor through this Motion, the Motion to separate value a secured claim based on the value of the personal property collateral (DCN: BLG-3), and a third motion to have a separately valued secured claim for which the collateral is another piece of real property (DCN: BLG-4), Debtor is improperly attempting to take one allowed claim and make it into three separate secured claims.

The Motion to Value the personal property securing this Creditor's claim has hit a roadblock in that Debtor has documented for the court that there is an outstanding dispute over the validity, extent, priority and amount of the liens and interests in the personal property. Until the adversary proceeding is filed, prosecuted, and concluded determining those interests, the secured claims for the creditors cannot be determined.

In connection with the Motion to Value the Secured Claim on Independence Bank and the Motion to Value the Secured Claim of Yuba-Sutter Economic Development Corp, the court notes as follows. The present Motion and the Motion and Supporting Declaration to value the secured claim of Independence Bank (DCN: BLG-2) bring to light some "interesting," and troubling issues for this case. They also show that this Motion is procedurally improper and must be dismissed without prejudice.

Proof of Claim No. 3-1 is based on an SBA loan obtained by Los Arcos Livestock Feed Store, LLC for $150,000.00 on March 9, 2017. Then, eight months later Debtor personally represents that Los Arcos Livestock Feed Store is his DBA and obtains a loan for $97,500.00 from the Yuba-Sutter Economic Development Corp., giving a security interest in the assets of the Los Arcos Livestock Feed Store.

Debtor now provides testimony under penalty of perjury that he "started my business" (but does not identify what is "my business") on July 2, 2012. He then testifies under penalty of perjury that he created "the LLC" (without identifying the limited liability company) on November 1, 2016, and then terminated the "LLC" on November 30, 2019.

Though having created an LLC, Debtor testifies that "I have always filed taxes as a sole proprietor." If there was a limited liability company doing business and obtaining $150,000 SBA loans, then that limited liability company necessarily was filing tax returns, even if the tax consequences flowed through to the members as they would for a partnership.

According to the California Secretary of State Department, Debtor's LLC was dissolved and a certificate of cancellation for the LLC's Termination was filed on November 30, 2020. https://businesssearch.sos.ca.gov/CBS/Detail.

The substance of this Motion is that Debtor asserts that the assets which Creditor identifies as collateral for Proof of Claim No. 3-1, assets of Los Arcos Livestock Feed Store, LLC, to secure the $150,000 SBA loan that Debtor, as the Member, obtained for Los Arcos Livestock Feed Store, LLC in March 2017, were and are really Debtor's personal assets. And that eight months after getting the $150,000 SBA loan, for which the assets were represented as being that of Los Arcos Livestock Feed

Store, LLC, Debtor then went to the Yuba-Sutter Economic Development Corp. to get a $97,500.00 loan personally, using the same assets to secure his personal loan.

The court dismisses without prejudice this Motion as premature and an improper attempt to create multiple secured claims from one allowed claim in violation of 11 U.S.C. § 506(a).

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Value Collateral and Secured Claim filed by Rafael Palos De La Torre ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is dismissed without prejudice.

16. **20-20430-E-13 BLG-7** | **RAFAEL DE LA TORRE** **Chad Johnson** | **MOTION TO AVOID LIEN OF QUARTERSPOT, INC** **3-31-20 [39]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on March 31, 2020. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The hearing on the Motion to Avoid Judicial Lien is continued to May 12, 2020 at 3:00 p.m., pursuant to Order of the court (Dckt.78).

17. **20-20430-E-13 BLG-6** | **RAFAEL DE LA TORRE** **Chad Johnson** | **MOTION TO AVOID LIEN OF QUARTERSPOT, INC** **3-31-20 [35]**

Final Ruling: No appearance at the April 28, 2020 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on March 31, 2020. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Quarterspot, Inc. ("Creditor") against property of the debtor, Rafael Palos De La Torre ("Debtor") commonly known as 2684 State Hwy 20, Marysville, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $70,448.41. Exhibit A, Dckt. 38. An abstract of judgment was recorded with Yuba County on January 7, 2020, that encumbers the Property. *Id.*

Creditor filed an amended Proof of Claim on April 7, 2020. Proof of Claim No. 5-2. The claimed amount is $75,176.51. Creditor calculates its claim as follows:

Unpaid Principal Balance	$ 54,279.54
Judgment Interest to 3/22/2019	$ 9,807.80
Post-Judgment Interest	$ 17,136.10
(03/23/19-01/27/2020; 311 days @ $55.10/day)	
Settlement Payments	($ 8,000.00)
Costs	$ 623.07
Attorney Fees	$ 1,330.00
Total Claim as of 01/27/2020	**$ 75,176.51**

Interest continues to accrue at a rate of $55.10 per day

Pursuant to Debtor's Amended Schedule A, the subject real property has an approximate value of $405,000.00 as of the petition date. Dckt. 91. The unavoidable consensual liens that total $449,012.76 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure §703.140(b)(5) in the amount of $1.00 on Schedule C. Dckt. 1.

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

ISSUANCE OF A COURT-DRAFTED ORDER

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Rafael Palos De La Torre ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of Quarterspot, Inc. ("Creditor"), California Superior Court for Yuba County Case No. CVCV1900214, recorded on January 7, 2020, Document No. 2020-000283, with the Yuba County Recorder, against the real property commonly known as 2684 State Hwy 20, Marysville, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

18. **20-20430-E-13 BLG-8** | **RAFAEL DE LA TORRE** **Chad Johnson** | **MOTION TO VALUE COLLATERAL OF SOLAR MOSAIC, INC.** **3-31-20 [43]**

Final Ruling: No appearance at the April 28, 2020 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's Attorney, Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on March 31, 2020. By the court's calculation, 28 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 Solar Mosaic, Inc., ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $7,000.00.

The Motion filed by Rafael Palos De La Torre ("Debtor") to value the secured claim of Solar Mosaic, Inc. ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 45. Debtor is the owner of solar panels and related equipment installed on Debtor's residence ("Property"). Debtor seeks to value the Property at a replacement value of $7,000.00 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).

In his Declaration, Debtor declares that $7,000.00 is what he believes he could sell the Property for if he were to disassemble the panels from his home. Declaration, ¶3.

The lien on the Property secures a non-purchase-money security interest perfected by the filing of a UCC Financing Statement incurred on October 7, 2016, which is more than one year prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $47,832.93. Proof of Claim, No. 23. 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 $7,000.00, 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 Rafael Palos De La Torre ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Solar Mosaic, Inc. ("Creditor") secured by an asset described as solar panels and related equipment installed on Debtor's residence ("Property") is determined to be a secured claim in the amount of $7,000.00, 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 $7,000.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

FINAL RULINGS

19.	**15-28301-E-13** **MET-3**	**RICHARD/PAULA CUMMINGS** **MaryEllen Terranella**	**MOTION TO MODIFY PLAN** **2-29-20 [106]**

Final Ruling: No appearance at the April 28, 2020 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on February 29, 2020. By the court's calculation, 59 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The hearing on the Motion to Confirm the Modified Plan is continued to 3:00 p.m. on June 2, 2020.

Continuance of April 28, 2020 Hearing

Considering the time this case has been pending, the issues relating to the Motion, and the impact of the COVID-19 restrictions on the ability to do business, the hearing is continued. If Debtor is able to obtain the reverse mortgage commitment or otherwise resolve the Trustee's opposition, the Parties may file a supplemental pleading stating the Trustee's withdrawal of opposition and any amended or additional terms to be stated in the order confirming the Plan. The Trustee shall lodge a proposed order granting this Motion, including any of the additional provisions to be included in the confirmation order.

REVIEW OF MOTION

The debtors, Richard Jay Cummings and Paula Rae Cummings ("Debtors") seek confirmation of the Modified Plan to address the deficiencies that led to Trustee's Motion to Dismiss due to Debtor Richard's retirement, and now his sole source of income is Social Security in the amount of $2,096.00 per month after retirement funds have been exhausted. Declaration, Dckt. 109. The Modified Plan provides $2,417.00 per month for 52 months, $1,679.00 per month for 7 months, and $28,102.00 per month for 1 month, and a 0% percent dividend to unsecured claims totaling $190,932.00. Modified Plan, Dckt. 108. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S RESPONSE

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response on March 30, 2020. Dckt. 116. Trustee requests that the court take the following into consideration:

A. The Plan is dependent on the Debtors' obtaining a reverse mortgage on their property. However, Debtors failed to indicate when or with whom they are applying for this reverse mortgage.

DISCUSSION

Debtors filed a Reply to Trustee's Response indicating that they have applied for the reverse mortgage with Mortgage Marketing Masters. The process was delayed due to COVID-19 taking them three weeks to complete the required counseling session but have obtained their certificate of eligibility. The information is now with the mortgage company which is waiting on the finance company.

However, Debtors do not yet have loan approval or a closing date at this time. Debtors requests for the motion to modify be granted or, in the alternative, that the hearing on the motion be continued to allow Debtors to update the court as to the status of the application.
The court shall issue a minute order substantially in the following form holding that:

> The Debtor's Motion to Confirm Modified Plan having been presented to the court, the Chapter 13 Trustee having filed an opposition, and good cause appearing;
>
> **IT IS ORDERED** that the hearing on the Motion to Confirmation of the Plan is continued to 3:00 p.m. on June 2. 2020.
>
> Pursuant to District Court General Order 612, no persons are permitted to appear in court unless authorized by order of the court. All appearances of parties and attorneys shall be telephonic through CourtCall, which advises the court that it is waiving the fee for the use of its service by *pro se* (not represented by an attorney) parties through April 30, 2020. **The contact information for CourtCall to arrange for a phone appearance is: (866) 582-6878**.

20. **20-20803-E-13 DPC-1 20 thru 21** | **LYNN WEST Peter Cianchetta** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK 3-17-20 [15]**

Final Ruling: No appearance at the April 28, 2020 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney, on March 17, 2020. By the court's calculation, 42 days' notice was provided. 14 days' notice is required.

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

The hearing on the Objection to Confirmation of Plan is continued to 3:00 p.m on June 2, 2020.

Continuance of April 28, 2020 Hearing

The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that: the First Meeting of Creditors as delayed due to the COVID-19 restricted access to the Federal Courthouse. HSBC Bankr, N.A., as Trustee, has filed a separate Objection to Confirmation (Dckt. 19) asserting that the plan provisions ($1,300 adequate protection payments until the property securing the claim, the Debtor's residence) is sold by some later, unspecified date) improperly modifies that creditor's claim. The court notes that it appears that the CARES Act provisions relating to residential loans may now be in play.

The court continues the hearing to allow the Trustee to conclude the Meeting of Creditors, the Debtor to determine what is a reasonable "property sold in the future" provision, and the Debtor and Creditor to determine whether the treatment of this claim is effected by non-bankruptcy law.

REVIEW OF MOTION

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

A. Trustee has been unable to examine Debtor at the Meeting of Creditors

due to COVID-16, and the meeting has been continued to April 16, 2020.

DISCUSSION

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearing on the Objection to Confirmation of the Plan is continued to 3:00 p.m. on June 2, 2020.
>
> Pursuant to District Court General Order 612, no persons are permitted to appear in court unless authorized by order of the court. All appearances of parties and attorneys shall be telephonic through CourtCall, which advises the court that it is waiving the fee for the use of its service by *pro se* (not represented by an attorney) parties through April 30, 2020. **The contact information for CourtCall to arrange for a phone appearance is: (866) 582-6878**.

21. **20-20803-E-13 DWE-1** **LYNN WEST** **Peter Cianchetta** **OBJECTION TO CONFIRMATION OF PLAN BY HSBC BANK USA, NATIONAL ASSOCIATION** **3-20-20 [19]**

Final Ruling: No appearance at the April 28, 2020 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on March 20, 2020. By the court's calculation, 39 days' notice was provided. 14 days' notice is required.

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

The hearing on the Objection to Confirmation of Plan is continued to 3:00 p.m on June 2, 2020.

Continuance of April 28, 2020 Hearing

The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that: the First Meeting of Creditors as delayed due to the COVID-19 restricted access to the Federal Courthouse. HSBC Bankr, N.A., as Trustee, has filed a separate Objection to Confirmation (Dckt. 19) asserting that the plan provisions ($1,300 adequate protection payments until the property securing the claim, the Debtor's residence) is sold by some later, unspecified date) improperly modifies that creditor's claim. The court notes that it appears that the CARES Act provisions relating to residential loans may now be in play.

The court continues the hearing to allow the Trustee to conclude the Meeting of Creditors, the Debtor to determine what is a reasonable "property sold in the future provision, and the Debtor and Creditor to determine whether the treatment of this claim is effected by non-bankruptcy law.

REVIEW OF MOTION

HSBC Bank USA, National Association as Trustee for Wells Fargo Asset Securities

Corporation, Mortgage Asset-Backed Pass-Through Certificates Series 2007-PA2 as serviced by Wells Fargo Bank, N.A. ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

A. Debtor's Plan impermissible modifies Creditor's obligation by proposing reduced adequate protection payments pending sale of Debtor's principal residence.

B. Debtor's Plan fails to cure pre-petition arrearage.

DISCUSSION

Creditor's objections are well-taken.

Modification of an Obligation Secured Only by Principal Residence

Debtor's Plan was not filed in good faith and is an improper modification of a claim secured only by a security interest in real property that is Debtor's principal residence. Creditor has filed a Proof of Claim indicating a secured claim in the amount of $678,082.11, secured by a first deed of trust against the property commonly known as 5080 Willow Vale Way, Elk Grove, California. Debtor's Schedules indicate that this is Debtor's primary residence. This modification violates 11 U.S.C. § 1322(b)(2), which prohibits the modification of an obligation secured only by Debtor's residence.

Failure to Cure Arrearage of Creditor

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts $250,135.07 in pre-petition arrearage. The Plan does not propose to cure those arrearage. Instead, the Plan references a sale pf the Property that Creditor surmises that satisfaction of this arrearage will be done through the sale. Moreover, the Debtor does not provide a specific plan that includes a date for the sale and thus Creditor objects to the indefinite cure period. Further, Creditor requests that Debtor should add to the Plan language stating what happens to the if the sale does not go through, namely that Debtor will surrender the Property and/or afford Creditor automatic relief from the stay if the Property is not sold.

The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearage.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by HSBC Bank USA, National Association as Trustee for Wells Fargo Asset Securities Corporation, Mortgage Asset-Backed Pass-Through Certificates Series 2007-PA2 as serviced by Wells Fargo Bank, N.A. ("Creditor") holding a secured claim having been

presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Objection to Confirmation of the Plan is continued to 3:00 p.m. on June 2, 2020.

Pursuant to District Court General Order 612, no persons are permitted to appear in court unless authorized by order of the court. All appearances of parties and attorneys shall be telephonic through CourtCall, which advises the court that it is waiving the fee for the use of its service by *pro se* (not represented by an attorney) parties through April 30, 2020. **The contact information for CourtCall to arrange for a phone appearance is: (866) 582-6878**.

22. **19-26906-E-13** **JEFFERY TAGGART** **MOTION TO MODIFY PLAN**
BLG-2 **Chad Johnson** **2-28-20 [39]**

DEBTOR DISMISSED: 03/07/2020

Final Ruling: No appearance at the April 28, 2020 hearing is required.

The Bankruptcy 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.

23. **20-20806-E-13 DPC-1** **MOHAMMED KHAN** **Richard Jare** **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK** **3-17-20 [16]**

Final Ruling: No appearance at the April 28, 2020 hearing is required.

The Chapter 13 Trustee, David Cusick (the "Trustee"), having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Objection to Confirmation was dismissed without prejudice, the matter is removed from the calendar, and the Chapter 13 Plan filed on February 15, 2020, is confirmed.**

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

24. **20-20816-E-13 DPC-1** **JULIE MCAULIFFE** **Thomas Amberg** **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK** **3-17-20 [15]**

Final Ruling: No appearance at the April 28, 2020 hearing is required.

The Chapter 13 Trustee, David Cusick (the "Trustee"), having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Objection to Confirmation was dismissed without prejudice, the matter is removed from the calendar, and the Chapter 13 Plan filed on February 13, 2020, is confirmed.**

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

25. **20-20831-E-13 DPC-1** **PHAI PHAYBOUN** **Michael Benavides** **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **3-17-20 [15]**

Final Ruling: No appearance at the April 28, 2020 hearing is required.

The Chapter 13 Trustee, David Cusick (the "Trustee"), having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Objection to Confirmation was dismissed without prejudice, the matter is removed from the calendar, and the Chapter 13 Plan filed on February 14, 2020, is confirmed.**

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

26. **19-25536-E-13 PGM-3** **26 thru 27** **DEBORAH WATSON** **Peter Macaluso** **CONTINUED MOTION TO VALUE COLLATERAL OF TOWD POINT MORTGAGE TRUST 2018-6** **1-14-20 [41]**

Final Ruling: No appearance at the April 28, 2020 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on January 14, 2020. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

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

The hearing on the Motion to Value Collateral and Secured Claim of Towd Mortgage Trust ("Creditor") is continued to 3:00 p.m. on June 2, 2020.

Continuance of April 28, 2020 Hearing

On April 20, 2020, Debtor filed a Supplemental Response requesting that the court further

continue the hearing on the instant motion until after the Shelter in Place order has passed. Dckt. 79. Debtor states that the order has prevented Debtor from obtaining a formal appraisal as both the Debtor and appraiser wish to prevent the spread of the virus. *Id*.

In light of the ongoing restrictions, the court continues the hearing to a period sufficiently after May 1, 2020, to allow Debtor to have the appraisal scheduled and conducted. Additionally, was travel restrictions are partially lifted, Debtor and the appraiser should be able to take advantage of such.

REVIEW OF MOTION

The Motion to Value filed by Deborah Joyce Watson ("Debtor") to value the secured claim of Towd Point Mortgage Trust ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 44. Debtor is the owner of the subject real property commonly known as 1800 59th Avenue, Sacramento, California ("Property"). Debtor seeks to value the Property at a fair market value of $280,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

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

PROOF OF CLAIM FILED

The court has reviewed the Claims Registry for this bankruptcy case. Proof of Claim No. 8-1 filed by Towd Point Mortgage Trust appears to be the claim subject of the present Motion.

OPPOSITION

Creditor has filed an Opposition on February 11, 2020. Dckt. 56. Creditor argues that Debtor cannot avoid Creditor's claim as it is not wholly unsecured. Creditor presents the Declaration of Peter Sousa, a licensed appraiser, who under penalty of perjury testified that the fair market value of the Property is $300,000.00 as of September 3, 2019. Declaration, 58. Thus, Creditor argues that its claim should be bifurcated between secured to the extend of the value ($15,164.81) and unsecured as to the rest.

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $284,835.19. Proof of Claim 9-1. Creditor's second deed of trust secures a claim with a balance of approximately $50,692.17. Proof of Claim 8-1.

Debtor's evidence of value is Debtor's opinion, stated to be $280,000. Declaration, Dckt. 44.

Creditor has provided the Declaration of Peter Sousa and his appraisal as to the value of the Property. Dckts. 58, 57. He testifies that the value is $300,000. The Appraisal Report (Dckt. 57) provides several comparable properties, makes adjustments for specific items, and states the basis for having an opinion of $300,000 for the value of the Property.

The court determines that the value of the Property is $300,000. When taking into account the ($284,835.19) obligation secured by the senior lien, there is approximately $15,000 in value for Creditor's claim secured by the junior lien.

While technically there being "value" to block the valuation for this obligation secured by the Debtor's residence, it is not the end of the story.

Here, even with a value of $300,000, there is no economically recoverable value for Creditor. If Debtor tells Creditor to "Stick It," as in stick a memo on this account file to proceed with foreclosure, here are the adverse consequences facing Creditor:

A. No payments will be made on the senior obligation causing interest to accrue, there being no escrow for taxes, and the insurance lapsing and the senior creditor putting in place expensive forced place insurance.

B. If Creditor goes to foreclose, it will have to pay all of the senior obligations, including property taxes and insurance, and then costs of sale, estimated to be ($24,000) for a $300,000 sale.

C. Thus, for its lien that has been protected against valuation, Creditor will lose likely around ($20,000). ($300,000 sales price - ($284,835) current debt - ($5,650) additional interest - ($750) insurance - ($3,000) property taxes - ($24,000) costs of sale = ($18,235).)

If Debtor does not want to lose the house and Creditor does not want to end up with, at best, a $0.00 recovery, it would appear likely that Debtor and Creditor could agree to a very modest agreed

secured claim to be paid over the plan. As an example, $3,000 paid over 60 months would require a $50 a month payment.

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 hearing on the Motion to Value Secured Claim filed by Deborah Watson, the 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 hearing on the Motion is continued to 3:00 p.m. on June 2, 2020, due to the inability of the appraiser to travel (in light of the coronavirus travel restrictions) as part of preparing the appraisal that is necessary for this litigation.
>
> In light of the ongoing restrictions, the court continues the hearing to a period sufficiently after May 1, 2020, to allow Debtor to have the appraisal scheduled and conducted. Additionally, was travel restrictions are partially lifted, Debtor and the appraiser should be able to take advantage of such.
>
> Pursuant to District Court General Order 612, no persons are permitted to appear in court unless authorized by order of the court. All appearances of parties and attorneys shall be telephonic through CourtCall, which advises the court that it is waiving the fee for the use of its service by *pro se* (not represented by an attorney) parties through June 1, 2020. **The contact information for CourtCall to arrange for a phone appearance is: (866) 582-6878**.
>
> If the parties have resolved their dispute significantly in advance of the above continued date, they may request by *ex parte* motion (lodging a proposed order with the court) to advance the hearing date.

27. **19-25536-E-13** **DEBORAH WATSON** **CONTINUED MOTION TO CONFIRM PLAN**
PGM-1 **Peter Macaluso** **1-14-20 [31]**

Final Ruling: No appearance at the April 28, 2020 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 14, 2020. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The hearing on the Motion to Confirm the Amended Plan is continued to 3:00 p.m. on June 2, 2020.

Continuance of April 28, 2020 Hearing

On April 20, 2020, Debtor filed a Supplemental Response requesting that the court further continue the hearing on the instant motion until after the Shelter in Place order has passed. Dckt. 79. Debtor states that the order has prevented Debtor from obtaining a formal appraisal as both the Debtor and appraiser wish to prevent the spread of the virus. *Id.*

In light of the ongoing restrictions, the court continues the hearing to a period sufficiently after May 1, 2020, to allow Debtor to have the appraisal scheduled and conducted. Additionally, was travel restrictions are partially lifted, Debtor and the appraiser should be able to take advantage of such.

REVIEW OF MOTION

The debtor, Deborah Joyce Watson ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for payments of $250.00 commencing January 25, 2020 for 33 months and

a 0.0% percent dividend to unsecured claims totaling $101,646.96. Amended Plan, Dckt. 34. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on February 6, 2020. Dckt. 48. Trustee opposes on the basis that:

1. The Plan relies on two pending Motions to Value Secured Claims and the Plan will not have sufficient monies to pay the claims in full if these Motions are denied.

2. Debtor has failed to provide documents in support of son paying "half of all costs."

CREDITOR'S OPPOSITION

Deutsche Bank National Trust Company ("Creditor Deutsche") holding a secured claim filed an Opposition on February 11, 2020. Dckt. 51. Creditor Deutsche opposes on the basis that:

1. The Plan does not provide for the full value of Creditor Deutsche's claim.

2. The Plan Does not promptly cure Creditor Deutsche's pre-petition arrears.

3. The Plan makes no provision for the ongoing post-petition payments.

CREDITOR'S OPPOSITION

Towd Point Mortgage Trust ("Creditor Towd") holding a secured claim filed an Opposition on February 11, 2020. Dckt. 53. Creditor Towd opposes on the basis that:

1. The Plan cannot value Creditor Towd's lien at zero and treat it as unsecured because the lien is not wholly unsecured.

Request for Continuance - March 31, 2020 Hearing

Debtor filed a Supplemental Declaration on March 27, 2020, in connection with the related Motion to Value Secured Claim. Dckt. 72. She testifies that due to the travel restrictions and shelter in place orders, the appraiser she has engaged to value the property at issue cannot conduct the appraisal at this time. Debtor requests a continuance.

Though the Bankruptcy Court is able to conduct its law and motion calendars in a (relatively) normal manner, such is not for the "real world." It is reasonable to request such continuance. Continuing the hearing on the Motion to value the Secured Claim necessitates continuance of this hearing.

DISCUSSION

Failure to Afford Plan Payment

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor has not provided the court with any extrinsic evidence of their son's payments of $950.00, $1,130.00, or $1,150.00, whichever amount is the correct amount. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

In her Response, Debtor asserts that she will provide a declaration regarding her son's income contribution prior to the hearing on this motion. On February 19, 2020, Debtor filed Declaration of Michael Bradford in support of the Plan stating that he willing and able to make monthly contributions in the sum of $1,130.00 and said contribution is a gift and does not expect to be repaid. Dckt. 67.

Failure to Cure Arrearage of Creditor Deutsche

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts $1,991.44 in pre-petition arrearage. The Plan does not propose to cure those arrearage. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearage.

Debtor contends that she is current on her mortgage payments. Response, at 2. Debtor alleges that she is not past due in the amount of $1,991.44 as payments was processed shortly after September 1, 2019, and will provide such evidence prior to the hearing. *Id*. Finally, Debtor contends that she inadvertently failed to include Creditor Deutsche as a Class 4 which is proper on the basis that Debtor is current with pre-petition mortgage payments. Id. Debtor requests the court Creditor as a Class 4 to the order confirming the Plan. *Id*.

Valuation of Creditor Towd's Secured Claim

Creditor Towd argues that Debtor improperly seeks to value Creditor's total secured claim at $0.00 despite there being equity in the Property. Creditor filed Proof of Claim 8-1 on November 11, 2019. The Proof of Claims asserts a secured claim in the amount of $50,692.17. The claim is secured by a second deed of trust over Debtor's residence. Debtor filed a Motion to Value Creditor's Secured Claim to be heard on February 25, 2020.

28. **13-23841-E-13 MS-1** **PATRICK PADILLA** **Mark Shmorgon** **MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA), N.A.** **3-20-20 [113]**

Final Ruling: No appearance at the April 28, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditor, and Office of the United States Trustee on March 20, 2020. By the court's calculation, 39 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Capital One Bank (USA), N.A. ("Creditor") against property of the debtor, Patrick Michael Padilla ("Debtor") commonly known as 166 Danvers Court, Vacaville, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $5,638.25. Exhibit D, Dckt. 116. An abstract of judgment was recorded with Solano County on July 19, 2012, that encumbers the Property. *Id.*

Pursuant to Debtor's Amended Schedule A, the subject real property has an approximate value of $196,000.00 as of the petition date. Dckt. 107. The unavoidable consensual liens that total $343,308.00 as of the commencement of this case are stated on Debtor's Amended Schedule D. Dckt. 107. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of $1.00 on Amended Schedule C. Dckt. 107.

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

ISSUANCE OF A COURT-DRAFTED ORDER

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Patrick Michael Padilla ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of Capital One Bank (USA), N.A., California Superior Court for Solano County Case No. FCM127505, recorded on July 19, 2012, Document No. 201200071931, with the Solano County Recorder, against the real property commonly known as 166 Danvers Court, Vacaville, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

29. 20-20745-E-13 DPC-1 29 thru 30

LEE NEWTON
Nima Vokshori

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK
3-17-20 [35]

Final Ruling: No appearance at the April 28, 2020 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on March 17, 2020. By the court's calculation, 42 days' notice was provided. 14 days' notice is required.

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

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Subsequent to the filing of this Objection, Debtor filed an Amended Plan and corresponding Motion to Confirm on March 19, 2020. Dckts. 39, 40. Filing a new plan is a *de facto* withdrawal of the pending plan. The Objection is sustained, and the plan is not confirmed.

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

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

30. **20-20745-E-13 EAT-1** **LEE NEWTON** **Nima Vokshori** **OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A. 3-16-20 [31]**

Final Ruling: No appearance at the April 28, 2020 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, and Office of the United States Trustee on March 16, 2020. By the court's calculation, 43 days' notice was provided. 42 days' notice is required. FED. R. BANKR. P. 2002(b); LOCAL BANKR. R. 3015-1(d)(1).

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Subsequent to the filing of this Objection, Debtor filed an Amended Plan and corresponding Motion to Confirm on March 19, 2020. Dckts. 39, 40. Filing a new plan is a *de facto* withdrawal of the pending plan. The Objection is sustained, and the plan is not confirmed.

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

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

31. **19-25390-E-13** **DENESE BALMER** **MOTION TO CONFIRM PLAN**
FF-3 **Gary Fraley** **3-12-20 [62]**

Final Ruling: No appearance at the April 28, 2020 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 12, 2020. By the court's calculation, 47 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Denese Elizabeth Balmer ("Debtor") has provided evidence in support of confirmation. No opposition to the Motion has been filed by the Chapter 13 Trustee, David Cusick ("Trustee"), or by creditors. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Denese Elizabeth Balmer ("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 12, 2020, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the

proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

32. **19-20393-E-13 MC-1** **32 thru 33**

PAULINO/DENA MACHADO
Muio Chea

OBJECTION TO CLAIM OF PURCHASING POWER, LLC, CLAIM NUMBER 25
3-14-20 [24]

Final Ruling: No appearance at the April 28, 2020 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 14, 2020. By the court's calculation, 45 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 25 of Purchasing Power, LLC is sustained, and the claim is disallowed in its entirety.

Paulino Azevedo Machado and Dena Michelle Machado, Chapter 13 Debtor, ("Objector") requests that the court disallow the claim of Purchasing Power, LLC ("Creditor"), Proof of Claim No. 25 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $400.20. Objector asserts that the Claim has not been timely filed. *See* FED. R. BANKR. P. 3002(c). The deadline for filing proofs of claim in this case is April 2, 2019. Notice of Bankruptcy Filing and Deadlines, Dckt. 15.

DISCUSSION

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

The deadline for filing a proof of claim in this matter was April 2, 2019. Creditor's Proof of Claim was filed on January 29, 2020. No order granting relief for an untimely-filed proof of claim for Creditor has been issued by the court.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Purchasing Power, LLC ("Creditor") filed in this case by Paulino Azevedo Machado and Dena Michelle Machado, the Chapter 13 Debtor, ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Proof of Claim Number 25 of Purchasing Power, LLC is sustained, and the claim is disallowed in its entirety.
>
> Attorney's fees and costs, if any, shall be requested as provided by Federal Rule of Civil Procedure 54 and Federal Rules of Bankruptcy Procedure 7054 and 9014.

33. **19-20393-E-13 MC-2** **PAULINO/DENA MACHADO** **Muio Chea** **OBJECTION TO CLAIM OF PURCHASING POWER, LLC, CLAIM NUMBER 26** **3-14-20 [28]**

Final Ruling: No appearance at the April 28, 2020 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 14, 2020. By the court's calculation, 45 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 26 of Purchasing Power, LLC is sustained, and the claim is disallowed in its entirety.

Paulino Azevedo Machado and Dena Michelle Machado, Chapter 13 Debtor, ("Objector") requests that the court disallow the claim of Purchasing Power, LLC ("Creditor"), Proof of Claim No. 26 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $2,803.21. Objector asserts that the Claim has not been timely filed. *See* FED. R. BANKR. P. 3002(c). The deadline for filing proofs of claim in this case is April 2, 2019. Notice of Bankruptcy Filing and Deadlines, Dckt. 15.

DISCUSSION

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

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

The deadline for filing a proof of claim in this matter was April 2, 2019. Creditor's Proof of Claim was filed on January 29, 2020. No order granting relief for an untimely-filed proof of claim for Creditor has been issued by the court.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Purchasing Power, LLC ("Creditor") filed in this case by Paulino Azevedo Machado and Dena Michelle Machado, the Chapter 13 Debtor, ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Proof of Claim Number 26 of Purchasing Power, LLC is sustained, and the claim is disallowed in its entirety.
>
> Attorney's fees and costs, if any, shall be requested as provided by Federal Rule of Civil Procedure 54 and Federal Rules of Bankruptcy Procedure 7054 and 9014.

34. **19-20316-E-13 SJT-1** **JULIE MCKENZIE** **Susan Turner** **OBJECTION TO CLAIM OF QUANTUM3 GROUP LLC, CLAIM NUMBER 8 1-31-20 [19]**

Final Ruling: No appearance at the April 28, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 31, 2020. By the court's calculation, 88 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 8 of Quantum3 Group, LLC as agent for Aqua Finance is sustained and this Creditor's claim is disallowed as a secured claim in its entirety. To the extent that Creditor has a claim, Proof of Claim 8-1, is a general unsecured claim.

Julie Ann McKenzie, Chapter 13 Debtor, ("Objector") requests that the court disallow the claim of Quantum3 Group, LLC as agent for Aqua Finance ("Creditor"), Proof of Claim No. 8 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of $1,996.26. Objector asserts that Creditor has not provided any proof that Creditor provided a secured money loan, or that there exists proof of a secured interest in the water ionizer that said interest is related to.

DISCUSSION

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim

after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial evidence to overcome the prima facie validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and requires financial information and factual arguments. *In re Austin,* 583 B.R. 480, 483 (B.A.P. 8th Cir. 2018). Notwithstanding the prima facie validity of a proof of claim, the ultimate burden of persuasion is always on the claimant. *In re Holm*, 931 F.2d at p. 623.

Proof of Claim Filed

Creditor filed a Proof of Claim on March 4, 2019. Proof of Claim 8-1. Creditor states a claim in the amount of $1,996.26. *Id*. Further, that the claim is secured by "Household goods(s)/Fixture Lien(s)," with a basis for perfection stated as a PMSI. *Id*.

In support of the Proof of Claim, Creditor included the 2-page Retail Installment Credit Agreement. The Agreement dated May 17, 2016, is for the sale of one water ionizer for $2,400.00 with a down payment of $100.00, for a total amount financed of $2,300.00. No other document is attached.

The Retail Installment Agreement Form appears to be one set up for use in multiple states. There is a statement on the backside of the Agreement Form which states:

> THIS SALES SLIP IS IN ACCORDANCE WITH THE TERMS OF YOUR REVOLVING CREDIT AGREEMENT, WHICH CONTAINS THE FEDERAL TRUTH-IN-LENDING DISCLOSURES, PAYMENT TERMS, AND OTHER IMPORTANT INFORMATION ABOUT YOUR ACCOUNT WITH US.

Proof of Claim 8-1, Attachment; p. 6. It may be that there are other documents that Creditor has concerning this Agreement, but they have not been provided, though Creditor was afforded the opportunity to respond.

There is no evidence presented that the seller of the goods retained a security interest or that the security interest was transferred to the Creditor. California Commercial Code § 9103 defines a purchase money security interest. Though a purchase money security interest in goods is perfected when it attaches to the collateral, with no filing of a financing statement required, Cal. Comm. § 9309, there still must be a security interest granted.

California law governing retail installment contracts (the Unruh Act), California Civil Code § 1801 et seq., addresses what is required with respect to the seller claiming a security interest in the good sold to the consumer. The requirements in California Civil Code § 1803.2 for every retail installment contract include:

A. The Retail Installment Contract Be contained in a single document, and

B. The single document shall contain

1. The entire agreement between the parties with respect to the cost and

terms of payment of the goods and services;

2. At the top of the contract the words "Security Agreement" in at least 12-point bold type font if a security interest in the goods is retained or obtained by the seller;

3. At the top of the contract the words **"Retail Installment Contract"** in at least 12-point bold font **if a security interest is not retained or obtained for the goods sold**.

Cal. Civ. § 1803.2(a), and (b)(1), (2).

The Retail Installment Contract attached to Proof of Claim 8-1 has in large bold font, that appears to be more than 12-point font the words:

RETAIL INSTALLMENT CREDIT AGREEMENT

There is no words **Security Agreement** at the top of the agreement or it appears any where in the Agreement. There is no retention of a security interest by the seller or a granting of a security interest by the buyer in the Retail Installment Credit Agreement attached to Proof of Claim No. 8-1.

Another curious aspect of this "Agreement" is that the signature for the seller is "A1 Windows and Siding Inc." It is not signed by a person purporting to be an officer, employee, or agent of the corporation, but it purports to have been signed by the corporation itself.

Creditor has not provided documentation that a security interest was retained by the seller or granted by the Debtor. On its face, the Retail Installment Contract does not have the required language at the top of the contract if a security interest is retained/given, and there are no provisions for a security interest in the Retail Installment Agreement.

Based on the evidence before the court, Creditor's claim is disallowed as a secured claim in its entirety. To the extent that Creditor has a claim, Proof of Claim 8-1, it is a general unsecured claim.

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 Quantum3 Group, LLC as agent for Aqua Finance ("Creditor"), filed in this case by Julie Ann McKenzie, Chapter 13 Debtor, ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Proof of Claim Number 8 of Creditor is sustained and Creditor's claim is disallowed as a secured claim in its entirety. To the extent that Creditor has a claim, Proof of Claim 8-1, it is a general unsecured claim.

Attorney's fees and costs, if any, shall be requested as provided by Federal Rule of Civil Procedure 54 and Federal Rules of Bankruptcy Procedure 7054 and 9014.

35. 19-25732-E-13 SJT-1 — RUDY/KAREN MENDEZ — Susan Turner — MOTION TO APPROVE LOAN MODIFICATION AND/OR MOTION REQUEST TO BIFURCATE PAYMENTS TO CHAPTER 13 TRUSTEE — 2-25-20 [32]

Final Ruling: No appearance at the April 28, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 25, 2020. By the court's calculation, 63 days' notice was provided. 28 days' notice is required.

The Motion to Approve Loan Modification 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 Approve Loan Modification is granted.

The Motion to Approve Loan Modification filed by Rudy Delgado Mendez and Karen Pancho Mendez ("Debtor") seeks court approval for Debtor to incur post-petition credit. LoanCare LLC ("Creditor"), whose claim the Plan provides for in Class 1, has agreed to a loan modification that will reduce Debtor's mortgage payment from the current $3,756.07 per month to $2,451.07 per month.

Debtor also request permission from the court to bifurcate the current payment to the Chapter 13 to allow Debtor to make direct payments to the lender during the trial period. Debtor will pay $2,451.07 to Creditor and $1,305 to the Chapter 13 Trustee, to equal $3,756.07. This will begin with the March 2020 plan payment and continue until the permanent loan modification is received. Trustee has no opposition to the temporary bifurcation or the temporary $1,305.00 payment to the Trustee required starting March 25, 2020. Response, Dckt. 38.

The Motion is supported by the Declaration of Rudy Delgado Mendez and Karen Pancho Mendez. Dckt. 34. The Declaration affirms Debtor's desire to obtain the post-petition financing and provides evidence of Debtor's ability to pay this claim on the modified terms.

This post-petition financing is consistent with the Chapter 13 Plan in this case and with Debtor's ability to fund that Plan. There being no objection from the Chapter 13 Trustee or other parties in interest, and the Motion complying with the provisions of 11 U.S.C. § 364(d), the Motion to Approve the Loan Modification 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 Approve Loan Modification filed by Rudy Delgado Mendez and Karen Pancho Mendez ("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 court authorizes Rudy Delgado Mendez and Karen Pancho Mendez to amend the terms of the loan with LoanCare LLC ("Creditor"), which is secured by the real property commonly known as 1216 Hamel Way, Galt, California, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion (Dckt. 35).

36. **19-26298-E-13** **SARAH WEBSTER** **MOTION TO MODIFY PLAN**
TLA-1 **Thomas Amberg** **3-18-20 [17]**

Final Ruling: No appearance at the April 28, 2020 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 18, 2020. By the court's calculation, 41 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy 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. The debtor, Sarah Kelly Webster ("Debtor"), has filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on April 6, 2020. Dckt. 24. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Sarah Kelly Webster ("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 18, 2020, is confirmed. Debtor's Counsel shall

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

37. 20-20955-E-13 RHS-1 37 thru 38 | **ESTATE OF ALTHA DAVIS** **Pro Se** | **ORDER TO SHOW CAUSE 3-17-20 [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. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

The Order to Show Cause was served by the Clerk of the Court on Tonya Nygren (Attorney for Lambert Davis, Special Administrator) and Office of the United States Trustee as stated on the Certificate of Service on March 22, 2020. The court computes that 37 days' notice has been provided.

The hearing on the Order to Show Cause is continued to 3:00 p.m. on May 12, 2020, to be conducted in conjunction with the hearing on the Order to Show Cause For Failure to Pay Fees (Dckt. 22).

Continuance of April 28, 2020 Hearing

On April 27, 2020, the Court Deputy was informed that due to a scheduling conflict Mr. Lamont Davis is unable to appear at the hearing and requests the hearing be continued. The court accommodates for such scheduling issues.

In light of this conflict, the court continues the hearing to May 12, 2020 at 3:00 p.m. The court will issue the orders for both Orders to Show Cause in this matter with the new hearing date and time.

ORDER TO SHOW CAUSE
AND
FOR LAMBERT DAVIS TO APPEAR AT THE HEARING

The court has now been presented with multiple filings of bankruptcy cases in the name of the estate of a deceased person, the "Estate of Altha Ruth Davis." The prior case, 19-27242, was dismissed on December 3, 2019. 19-27242; Order, Dckt. 20. The case was ordered dismissed due to the request purportedly of "Altha R. Davis" (the signature on the Motion to Dismiss). *Id.*; Dckt. 11.

The Bankruptcy Petition in case 19-27242 was not purported to be signed by "Altha R. Davis,"

but is signed by "Lambert Davis." *Id.*; Dckt. 1 at 6.

Attached to the Bankruptcy Petition in case 19-27242 there is a copy of an Order for Probate issued by the California Superior Court for Sacramento County. *Id.* at 9. This Order states that Altha Davis died on July 12, 2019. Further, that Lambert Davis, Jr. was appointed as the special administrator in that probate proceeding.

Thus, it appears to be a legal impossibility that "Altha R. Davis" could have signed the Motion to Dismiss, which is dated December 3, 2019, a date which the Superior Court states is five months after she died.

In the current Bankruptcy Case filed on February 21, 2020, the Bankruptcy Petition is signed by Lambert Davis. Dckt. 1 at 6. On March 3, 2020, a Motion for Dismissal was filed in this case for the "estate of Altha Ruth Davis," with this Motion signed by Lambert Davis. Dckt. 11.

No reason is given by Mr. Lambert in this case for requesting the dismissal, as no reason was given in the motion signed by "Altha Davis" in the prior case.

Interestingly, the Estate of Altha Ruth Davis has only one person listed on the Master Mailing List, that of Celink in Lansing, Michigan. Dckt. 4; and in 19-27242, Dckt. 4.

Eligibility to Be a Debtor

Congress provides in the Bankruptcy Code who may be a Debtor in a Chapter 13 case.

> (e) **Only an individual** with regular income that owes, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than $419,275 and noncontingent, liquidated, secured debts of less than $1,184,200 or an individual with regular income and such individual's spouse, except a stockbroker or a commodity broker, that owe, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts that aggregate less than $419,275 and noncontingent, liquidated, secured debts of less than $1,184,200 may be a debtor under chapter 13 of this title.

11 U.S.C. § 109(e) (emphasis added). An individual is a living, breathing person - not a corporation, limited liability company, or a probate estate. Nor is a probate estate eligible to be a debtor under any other Chapter of the Bankruptcy Code. *In re Goerg*, 844 F.2d 1562, 1566 (11th Cir. 1988), cert. denied 488 U.S. 1034 (1989); *In re Estate of Whiteside*, 64 B.R. 99, (Bankr. E.D. Cal. 1986).

Power of the Court to Regulate Practices

Bankruptcy courts have jurisdiction and the authority to impose sanctions, even when the bankruptcy case itself has been dismissed. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384,395 (1990); *Miller v. Cardinale (In re DeVille)*, 631 F.3d 539, 548-549 (9th Cir. 2004). The bankruptcy court judge also has the inherent civil contempt power to enforce compliance with its lawful judicial orders. *Price v. Lehtinen (in re Lehtinen)*, 564 F.3d 1052, 1058 (9th Cir. 2009); see 11 U.S.C. § 105(a).

Federal Rule of Bankruptcy Procedure 9011 imposes obligations on both attorneys and parties appearing before the bankruptcy court. This Rule covers pleadings filed with the court. If a party or counsel

violates the obligations and duties imposes under Rule 9011, the bankruptcy court may impose sanctions, whether pursuant to a motion of another party or *sua sponte* by the court itself. These sanctions are corrective, and limited to what is required to deter repetition of conduct of the party before the court or comparable conduct by others similarly situated.

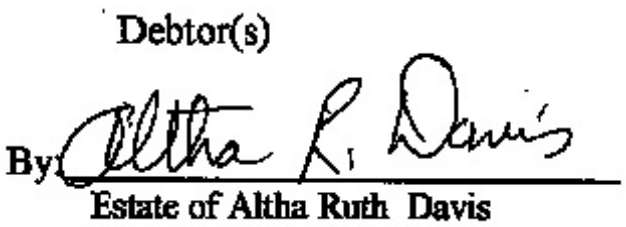
A bankruptcy court is also empowered to regulate the practice of law in the bankruptcy court. *Peugeot v. U.S. Trustee (In re Crayton)*, 192 B.R. 970, 976 (B.A.P. 9th Cir. 1996). The authority to regulate the practice of law includes the right and power to discipline attorneys who appear before the court. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991); see *Price v. Lehitine*, 564 F. 3d at 1058.

The primary purpose of a civil contempt sanction is to compensate losses sustained by another's disobedience of a court order and to compel future compliance with court orders. *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1192 (9th Cir. 2003). The contemptor must have an opportunity to reduce or avoid the fine through compliance. *Id.* The federal court's authority to regulate the practice of law is broader, allowing the court to punish bad faith or willful misconduct. *Price v. Lehitine*, 564 F.3d at 1058. However, the bankruptcy court cannot issue punitive sanctions pursuant to its power to regulate the attorneys or parties appearing before it. *Id.* at 1059.

ORDER TO APPEAR AND SHOW CAUSE
WHY SANCTIONS SHOULD NOT BE ORDERED

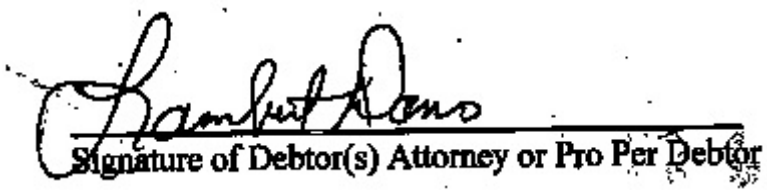
With the present case and the prior case, the court has Lambert Davis commencing bankruptcy cases for the estate of the deceased Altha Ruth Davis. These have been filed as Chapter 13 cases, with there being no attempt to prosecute them as Chapter 13 cases. Rather, it appears that the filings are being done for purposes other than the good faith filing and prosecution of a bankruptcy case.

Additionally, it appears that the signature of the deceased Altha R. Davis has been forged on the Motion to Dismiss the prior case. The Altha R. Davis "signature" from the Motion to Dismiss in the prior Bankruptcy Case is copied below:



19-27242; Dckt. 11.

The signature of Lambert Davis from the Motion to Dismiss is copied and pasted below:



The court determines it necessary to order the appearance of Lambert Davis to address his repeated filing of bankruptcy cases for the Estate of the deceased Altha R. Davis, how he or someone produced the signature of Altha Davis on the Motion to Dismiss in Case 19-27242, and to show cause why the court does not impose a corrective monetary sanction of $620.00 (which is equal to the amount of the two filing fees required for the two cases filed, which fees were not paid).

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearing on the Order to Show Cause is continued to 3:00 p.m. on May 12, 2020, to be conducted in conjunction with the hearing on the Order to Show Cause For Failure to Pay Fees (Dckt. 22).

38. 20-20955-E-13 ESTATE OF ALTHA DAVIS CONTINUED ORDER TO SHOW CAUSE -FAILURE TO PAY FEES
3-27-20 [22]

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

The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*) and Chapter 13 Trustee as stated on the Certificate of Service on March 29, 2020. The court computes that 30 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: $79.00 due on March 23, 2020.

The hearing on the Order to Show Cause is continued to 3:00 p.m. on May 12, 2020, to be conducted in conjunction with the hearing on the Order to Show Cause (DCN: RHS-1).

Continuance of April 28, 2020 Hearing

On April 27, 2020, the Court Deputy was informed that due to a scheduling conflict Mr.

Lamont Davis is unable to appear at the hearing and requests the hearing be continued. The court accommodates for such scheduling issues.

In light of this conflict, the court continues the hearing to May 12, 2020 at 3:00 p.m. The court will issue the orders for both Orders to Show Cause in this matter with the new hearing date and time.

The court's docket reflects that the default in payment that is the subjection of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: $79.00.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearing on the Order to Show Cause is continued to 3:00 p.m. on May 12, 2020, to be conducted in conjunction with the hearing on the Order to Show Cause (DCN: RHS-1).

39. 19-21310-E-13 WANDA COLLIER-ABBOTT MOTION TO CONFIRM PLAN
39 thru 40 Richard Jare 3-4-20 [192]

Final Ruling: No appearance at the April 28, 2020 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 4, 2020. By the court's calculation, 55 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The hearing on the Motion to Confirm the Modified Plan is continued to 3:00 p.m. on May 5, 2020, to be conducted in conjunction with the hearing on the Motion to Value Secured Claim (DCN: RJ-6).

Continuance of the April 28, 2020 Hearing

The court apologizes to the Parties for the late notice of the continuance. The judge to whom this case is assigned will not be hearing the April 28, 2020 calendar. Given the heretofore issues being addressed in the related Motion to Value (DCN: RJ-6), the court continues the Confirmation and Motion to Value hearings to allow the parties to make their oral arguments to the judge who is making the decision.

REVIEW OF MOTION

The debtor, Wanda Collier-Abbott ("Debtor") seeks confirmation of the Modified Plan after failing to get a plan confirmed and has amended her budget to establish disposable income consistent with the plan. Declaration, Dckt. 194. The Modified Plan provides payments of $2,850.00 for 36 months, and a 0% percent dividend to unsecured claims totaling $5,000.00. Modified Plan, Dckt. 191. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CREDITOR'S OPPOSITION

Real Time Resolutions, Inc. ("Creditor") holding a secured claim filed an Opposition on April 6, 2020. Dckt. 199. Creditor opposes confirmation of the Plan on the basis that:

A. Debtor fails to provide adequate protection payments to Creditor.

B. Plan is too speculative.

C. Plan is not feasible.

D. Debtor is incapable of reorganization.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on April 14, 2020. Dckt. 203. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor is delinquent in plan payments.

B. It is unclear if Debtor can make Plan payments.

C. Plan is too speculative as to the sale or refinance of the property.

D. Attorney's fees should not be paid through the Plan.

CREDITOR'S OPPOSITION

The Bank of New York Mellon ("Creditor") holding a secured claim filed an Opposition on April 14, 2020. Dckt. 206. Creditor opposes confirmation of the Plan on the basis that:

A. Plan fails to cure Creditor's pre-petition arrears.

B. Plan is not feasible.

DISCUSSION

Review of Debtor's Proposed Plan

Debtor's Proposed Third Modified Plan provides that plan dividend for the Class 2 claim of RPA CP Opportunity Trust shall be $350 a month for the first thirty-five months of **this Plan**, and then in the thirty-six month of **this Plan** Debtor shall make a final payment of approximately $158,143.00. Third Modified Plan, Additional Provisions, ¶ 7.01. Dckt. 191. Thus, it appears that the Third Modified Plan provides for there to be three years from confirmation before more than a nominal payment of $350 a month is made by Debtor.

In Section 7.02 of the Third Modified Plan, Debtor states that the payment in the thirty-sixth month shall be from a sale or refinance by the thirty-sixth month of **this Plan**.

In Section 7.03 it states that Debtor has made payments of $24,700 for the first 11 months altogether (but does not specify eleven months from when) and will thereafter (it not being clear when is "thereafter") "resume" making payments of $2,850.00 a month.

In Section 7.04 it states that Debtor will pay arrears of $37,554.51 in a lump sum on "month 36 of the case." It is not clear how requiring this lump sum payment in "month 36 of the case" works with Debtor not selling or refinancing property until "month 36 "of this plan."

Review of Opposition and Ruling

Trustee's and Creditors's objections are well-taken. There are several issues with Debtor's Third Modified Plan that cause this court great concern.

Delinquency

The Chapter 13 Trustee asserts that Debtor is $350.00 delinquent in plan payments, which represents a fraction of one month of the $2,850.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Attorney's Fees

Under Local Bankruptcy Rule 2016(a), compensation paid to attorneys for the representation of chapter 13 debtors is determined according to 2016-1(c), which provides for fixed fees approved in connection with plan confirmation. However, if a party in interest objects, such as the trustee, compensation is determined in accordance with 11 U.S.C. §§ 329 and 330.

Trustee objects to attorney's fees being paid through the Plan. Thus, counsel's fees will be reviewed under the standard loadstar analysis.

Failure to Cure Arrearage of Creditor Bank of New York Mellon

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts $37,354.41 in pre-petition arrearage. The Plan does not propose to cure those arrearage. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearage.

Feasibility

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). The court will review the concerns regarding whether Debtor will be able to make plan payments.

Debtor lacks sufficient income to Support Proposed Plan Payments. According to Debtor's Schedule J, Debtor has monthly disposable income of $2,100.00. Yet, her proposed plan payment is $2,850.00.

Debtor's Plan proposes payments of $2,044.12 to Creditor New York Mellon, yet the actual monthly mortgage payment beginning May 2020 is $2,325.07.

The Plan is too speculative. Whether Debtor can make the Plan depends on the sale of real estate property or refinancing by "no later than month 36" of the Plan. Yet, Debtor fails to explain why the delay of three years to sell the property which unduly prejudices creditors. This is not the first time the court and parties involved have raised this particular concern. The Civil Minutes for January 28, 2020, the hearing on the Second Modified Plan, note the following:

> Trustee contends that the Plan is not feasible because the Plan proposes the refinance or sale of the Property. Further arguing that this sale or refinance appears speculative or as a delay, as the Plan fails to provide an actual time frame in which any of these actions will take place or why it should take 36 months to sell or refinance.

Civil Minutes at 7. Dckt. 166.

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

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Wanda Collier-Abbott ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearing on the Motion to Confirm the Modified Plan is continued to 3:00 p.m. on May 5, 2020, to be conducted in conjunction with the hearing on the Motion to Value Secured Claim (DCN: RJ-6).
>
> Pursuant to District Court General Order 612, no persons are permitted to appear in court unless authorized by order of the court. All appearances of parties and attorneys shall be telephonic through CourtCall, which advises the court that it is waiving the fee for the use of its service by *pro se* (not represented by an attorney) parties through June 1, 2020. **The contact information for CourtCall to arrange for a phone appearance is: (866) 582-6878**.

40. 19-21310-E-13 RJ-6 — WANDA COLLIER-ABBOTT — Richard Jare — CONTINUED MOTION TO VALUE COLLATERAL OF RRA CP

Final Ruling: No appearance at the April 28, 2020 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, creditors, and Office of the United States Trustee on January 24, 2020. 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). The defaults of the non-responding parties and other parties in interest are entered**.**

The hearing on the Motion to Value Collateral and Secured Claim of RRA CP Opportunity Trust 2 ("Creditor") is continued to 3:00 p.m. on May 5, 2020.

Continuance of the April 28, 2020 Hearing

The court apologizes to the Parties for the late notice of the continuance. The judge to whom this case is assigned will not be hearing the April 28, 2020 calendar. Given the heretofore issues being addressed in this Motion to Value (DCN: RJ-6), the court continues the related Motion to Confirm and this Motion to Value hearings to allow the parties to make their oral arguments to the judge who is making the decision.

REVIEW OF MOTION

The Motion to Value filed by Wanda Collier-Abbott ("Debtor") to value the secured claim of RRA CP Opportunity Trust 2 ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 154. Debtor is the owner of the subject real property commonly known as 3101 Spinning Rod Way, Sacramento, California ("Property"). Debtor seeks to value the Property at a fair market value of $470,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Creditor's claim is secured by the second deed of trust against the Property. The claim secured pursuant to the first deed of trust is identified as that of Bank of New York Mellon, as Trustee. Bank of New York Mellon, Trustee, filed Proof of Claim No. 6-1, in which the amount of the secured

claim is stated to be $312,589.38.

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

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

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

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

At dispute in this Contested Matter is whether Creditor's claim, secured only by Debtor's residence may be valued in this case pursuant to 11 U.S.C. § 506(a), the allowed secured claim determined, and that allowed secured claim amount provided for in the plan, with Creditor having an unsecured claim for the balance. As addressed below, Creditor's claim may properly be valued pursuant to 11 U.S.C. § 506(a) to determined what is the allowed secured claim.

TRUSTEE'S OPPOSITION

Trustee filed an Opposition on February 10, 2020. Dckt. 168. Trustee opposes on the basis that:

1. Motion fails to state with particularity grounds for relief and failed to address issues raised by the court in the denial of the previous motion to value.

2. Declaration appears to be the same one used in the previous motion except for changes in the caption and additional changes as to needed repairs which create discrepancies and lack detail.

CREDITOR'S OPPOSITION

Creditor filed an Opposition on February 10, 2020. Dckt. 171. Creditor objects to the valuation on the basis that:

1. Creditor's loan is not a "short-term loan."

2. The fair market value of the Property was approximately $550,000.00 on or near the date of the filing and therefore no portion of Creditor's lien can be bifurcated and/or avoided.

Additionally, Creditor requests that the Motion be denied, or, that in the alternative, Creditor be allowed to obtain an interior appraisal. *Id*. at 2.

DISCUSSION

DETERMINATION OF 11 U.S.C. § 1322(c)(2) EXCLUSION OF CLAIM FROM 11 U.S.C. § 1322(b)(2)

In a matter of first impression in the Ninth Circuit, Debtor asserts that even though Creditor's claim is secured only by Debtor's primary residence for which there is undisputedly at least some value and 11 U.S.C. § 1322(b)(2) states that such a claim cannot be modified, Debtor asserts that the provisions of 11 U.S.C. § 133(c) modify that restriction because Creditor's claim comes due, under the original terms of the obligation, before the plan term concludes.

Review of Claim

Proof of Claim No. 4-1 was filed on May 6, 2019, for Creditor. The attachments to Proof of Claim No. 4-1 include a Note which is titled "NOTE With Balloon Payment." Proof of Claim 4-1, p. 14. Paragraph 3 of the Note states that all amounts then owing on April 1, 2020, will be due in full. The bankruptcy case was filed on March 1, 2019, the NOTE With Balloon Payment states that the obligation is due in full on April 1, 2020, with April 1, 2020 being before the term of the plan in this case is to conclude.

Review of Statutory Provisions

In considering this issue, the court begins with the well established doctrine for statutory construction. The Supreme Court has been very clear in reading and applying the "plain language" stated by Congress in statutes. *Hartford Underwriters Insurance Company v. Union Planters Bank, N.A.*, 530 U.S. 1 (2000); *United States v. Ron Pair Enterprises, Inc., 489 U.S. 235, 241, 103 L. Ed. 2d 290, 109 S. Ct. 1026 (1989)*. The basic direction is that Congress says in a statute what it means and means in a statute what it says. *Connecticut Nat. Bank v. Germain, 503 U.S. 249, 254, 117 L. Ed. 2d 391, 112 S. Ct. 1146 (1992);* (quoting *Caminetti v. United States, 242 U.S. 470, 485, 61 L. Ed. 442, 37 S. Ct. 192 (1917))*; *United Savings Association of Texas v. Timbers of Inwood Forest Associates, LTD.*, 484 U.S. 365, 371 (1988). This court will not presuppose that the Supreme Court or Congress, in adopting the Federal Rules of Bankruptcy Procedure, did so expecting that the inferior court would not first look to the plain meaning of the Rule.

Beginning with the prohibition on modifying some secured claims in Chapter 13 plan, the Bankruptcy Code provides in 11 U.S.C. § 1322(b)(2) (emphasis added):

(b) Subject to subsections (a) and (c) of this section, the plan may—
. . .

> (2) **modify the rights of holders of secured claims**, **other than** a claim **secured only** by a security interest in real property that is the **debtor's principal residence**, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims;

As the Ninth Circuit Court of Appeals addressed in *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); if there is no value in the collateral for the holder of the secured claim, then it may be valued at $0, there being no "secured claim" to be protected by the above. However, if there is any value, then the entire secured claim is protected from valuation under 11 U.S.C. § 506(a).

Debtor asserts that the above restriction on modifying claims secured by the debtor's residence is itself limited by 11 U.S.C. § 1322(c)(2), which provides (emphasis added):

> (c) Notwithstanding subsection (b)(2) and applicable nonbankruptcy law—
>
> > (1) . . . ; and
> >
> > (2) in a case in which the **last payment** on the **original payment schedule for a claim** secured only by a security interest in real property that is the debtor's principal residence is due before the date on which the final payment under the plan is due, the **plan may provide for the payment of the claim as modified pursuant to section 1325(a)(5) of this title**.

Going to 11 U.S.C. § 1325(a)(5) it states (emphasis added, with strikeout text for the provisions clearly not applicable to the issue before the court):

> (5) with respect to each allowed secured claim provided for by the plan—
>
> ~~(A) the holder of such claim has accepted the plan;~~
>
> (B)
>
> > (i) the plan provides that—
> >
> > > (I) the holder of such claim retain the lien securing such claim until the earlier of—
> > >
> > > > (aa) the payment of the underlying debt determined under nonbankruptcy law; or
> > > >
> > > > (bb) discharge under section 1328; and
> > >
> > > (II) if the case under this chapter is dismissed or converted without completion of the plan, such lien shall also be retained by such holder to the extent recognized by applicable nonbankruptcy law;
> >
> > (ii) the value, as of the effective date of the plan, of property to be distributed under the plan on account of such claim is not less than the

allowed amount of such claim; **and**

(iii) if—

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

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

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

Looking at the "plan language" of 11 U.S.C. § 1325(a)(5), it appears to say that if there is a secured claim, for which the only collateral is the debtor's primary residence for which the final payment under the original payment terms is due before the end of the plan, then the Plan may:

(1) The creditor will retain its lien until the earlier of the payment of obligation as determined under nonbankruptcy law or entry of the debtor's Chapter 13 discharge;

(2) the value, as of the effective date of the plan, of the payments on the secured claim must be the amount of the allowed secured claim; and

(3) There must be equal periodic payments to the creditor holding the secured claim.

Debtor's Authorities

Debtor's points and authorities provides minimal analysis of this issue and the cited cases. The court begins with the Circuit Court of Appeals decisions cited by Debtor.

The first is *American General Finance, Inc. v. Paschen (In re Pachen)*, 296 F.3d 1203 (11th Cir. 2002). In that case, the Eleventh Circuit concluded that the 11 U.S.C. § 1322(c)(2) exception works through 11 U.S.C. § 1325(b)(5) to allow not only payment terms to be modified, but also to allow for an 11 U.S.C. § 506(a) valuation.

In 2019, the Fourth Circuit Court of Appeals revisited a prior decision that went contrary to the ruling in *Paschen*, but reversed that prior decision. In *Hurlburt v. Black*, 925 F.3d 154 (4th Cir. 2019), the Fourth Circuit Court of Appeals concluded that the 11 U.S.C. § 1322(c)(2) exception providing for the 11 U.S.C. § 1325(a)(5) treatment for claims that come due in full during the period of the plan to be modified, including 11 U.S.C. § 506(a) valuation.

Creditor's Authorities

Creditor directs the court to the Supreme Court decision, *Nobelman v. American Savings Bank (In re Nobelman)*, 508 U.S. 324 (1993), for the proposition that the provisions of 11 U.S.C.

§ 1332(b)(2), when read in conjunction with 11 U.S.C. § 506, precludes the bifurcation of any and all claims secured by the debtor's primary residence if there is equity to protect such lien. Interestingly, the Nobelman decision from 1993 is older than the "aged case law from other circuits" that Creditor dismissive chooses not to address.

Discussion of Applicable Law

Beginning with the decision in *Nobelman*, the Supreme Court determined that the provisions of 11 U.S.C. § 1322(b)(2) focuses on the "rights" of the creditor being protected from modification. *Nobelman v. American Savings Bank (In re Nobelman)*, 508 U.S. at 329, 331. These protected rights included the right for the entire obligation to be treated as a secured claim and not be bifurcated pursuant to 11 U.S.C. § 506(a). While not allowing for bifurcation, the Supreme Court noted that some rights could be modified as permitted under the Bankruptcy Code, such as 11 U.S.C. § 1322(b)(5), permitting the curing of defaults through the Chapter 13 plan. *Id.* at 330. Thus, the protection granted pursuant to 11 U.S.C. § 1322(b)(5) was not sacrosanct and insulated from all other provisions of the Bankruptcy Code that Congress made applicable to a claim secured only by the debtor's residence.

In 1994 Congress amended this code section and added 11 U.S.C. § 1322(c) (and re-lettering former paragraph (c) as (d)) to add the exception to 11 U.S.C. § 1322(b)(2). When the Supreme Court issued its ruling in Nobelman, there was, and there could not be, a consideration of the yet to be enacted exception to 11 U.S.C. § 1322(b)(2) residence secured claims.

8 Collier on Bankruptcy, ¶ 1322.17 (Sixteenth Edition) (emphasis added), discusses the effect of this statutory exception to the residence secured claim limitations in 11 U.S.C. § 1322(b)(2).

> ¶ 1322.17 Exceptions to the Rule Against Modification of Home Mortgages; § 1322(c)(2)
>
> **Section 1322(c)(2) carves out an exception to the rule in section 1322(b)(2)**, which prohibits the modification of the rights of holders of claims secured solely by a security interest in real estate that is the debtor's principal residence. It provides that **if the last payment on the original payment schedule for such a mortgage is due before the final payment** under the plan is due the debtor may pay **the claim as modified pursuant to section 1325(a)(5)**.
>
> The legislative history of the provision states that it **was intended to overrule the decision** of the Court of Appeals for the Third Circuit in ***First National Fidelity Corp. v. Perry***, which held that a debtor could not utilize section 1325(a)(5) to provide for a home mortgage protected from modification by section 1322(b)(2). Section 1322(c)(2) thus expressly provides that certain mortgages may be modified and provided for under section 1325(a)(5). Specifically, this may occur if the last payment on the original payment schedule for the mortgage is due before the final payment under the plan is due.
>
> As the Court of Appeals for the Eleventh Circuit held in *American General Finance, Inc. v. Paschen (In re Paschen)*, the **plain language** of this provision **permits the modification of a claim on such a home mortgage through the bifurcation of that claim into secured and unsecured components**, with the

unsecured component crammed down pursuant to section 1325(a)(5).

Because the plan may not extend beyond five years, **this section will encompass** short-term mortgages, fully matured mortgages, **long-term mortgages** on which the debtor has nearly completed payments, **and mortgages with balloon payments**. Congress obviously believed that debtors with such mortgages needed additional protection. Short-term and **balloon payment mortgages often have high rates or terms that are particularly unfavorable**, which **Congress has deemed deserving of close scrutiny.** And debtors nearing the end of a long-term mortgage often have large amounts of equity that could be lost in a foreclosure. Reverse mortgages that have matured due to the death of the original mortgagor can also be modified under section 1322(c)(2). The fact that other nonmodifiable mortgages may be junior to a mortgage described by section 1322(c)(2) does not affect the debtor's ability to modify that mortgage.

The exception from the modification prohibition also **overrules** for such mortgages the Supreme Court's decision in ***Nobelman v. American Savings Bank***. That decision was **based solely on section 1322(b)(2), to which section 1322(c) is an** [subsequently enacted] **exception**. Again, it is not surprising that Congress would create an exception for the types of mortgages described above, which are often undersecured.

The most recent Circuit Court authority is the *Hurlburt v. Black*, 925 F. 3d 154 (4th Cir. 2019). In analyzing these interlocking Code sections, the *Hurlburt* court states:

> Emphasizing that other aspects of Section 1322(c)(2)—not highlighted in ***Witt***—indicate that **Congress intended for the exception to permit modification of "claims," not just "payment[s]," other courts universally have criticized *Witt*'s finding of ambiguity** and attendant reliance on the statute's legislative history. *See*, *e.g., In re Paschen*, 296 F.3d at 1209; *In re Eubanks*, 219 B.R. at 471-73; *In re Tekavec*, 476 B.R. 555, 556, n. 2 (Bankr. E.D. Wis. 2012); *Geller v. Grijalva (In re Grijalva)*, No. 4:11-bk-25386-EWH, 2012 Bankr. LEXIS 1355, 2012 WL 1110291, at *3-4 (Bankr. D. Ariz. Apr. 2, 2012); *In re Reeves*, 221 B.R. 756, 760 (Bankr. C.D. Ill. 1998); *In re Mattson*, 210 B.R. 157, 158-59 (Bankr. D. Minn. 1997). **Commentators have reached the same conclusion**—the plain language of Section 1322(c)(2) authorizes Chapter 13 plans to modify claims, not just payment schedules. ***See* Nat'l Bankr. Rev. Comm'n, Report of the National Bankruptcy Review Commission 237 (1997) ("[S]ection 1322(c)(2) authorizes a stripdown of an undersecured residential mortgage if final payment would become due during the course of the Chapter 13 plan."**); 8 Collier on Bankr. (MB) ¶ 1322.17 (2018) (opining that "the plain language of [§ 1322(c)(2)] permits the modification of a claim on [a qualifying] home mortgage through the bifurcation of that claim into secured and unsecured components, with the unsecured component crammed down pursuant to section 1325(a)(5)," and characterizing *Witt* as a "strained reading of the language" that runs "contrary to accepted canons of statutory construction, as well as the great weight of authority, and inconsistent with other language in the subsection that specifically referred to section 1325(a)(5)").

Hurlburt v. Black, 925 F. 3d 154, 161 (4th Cir. 2019).

This court's reading of the plan language of these interlocking statutory provisions renders the same result. The exception created in 11 U.S.C. § 1322(c)(2) takes the present claim out of the protections of 11 U.S.C. § 1322(b)(2).

Beginning with the language of 11 U.S.C. § 1322(c)(2), it provides:

1. Notwithstanding the provisions of 11 U.S.C. § 1322(b)(2)

2. For a secured claim

    a. which is secured only by the debtor's residence

    b. for which the last payment based on the original payment terms comes due before the date when the final payment on the plan is due;

3. The plan may provide for the payment of that secured claim as provided in 11 U.S.C. § 1325(a)(5).

The plain language states that the limitations under 11 U.S.C. § 1322(c)(2) does not "protect" the claim coming due before the end of the plan from treatment under 11 U.S.C. § 1325(a)(5).

Going to 11 U.S.C. § 1325(a)(5), it provides that for this claim secured only by the debtor's residence for which the last payment, as computed under the original payment terms, comes due, the plan treatment may be:

1. For the holder of an allowed secured claim;

2. The holder of the claim shall retain the lien

    a. until the claim is paid in full as determined under nonbankruptcy law, **or**

    b. the debtor is granted a discharge pursuant to 11 U.S.C. § 1328;

3. The value of the payments disbursed to the creditor holding the allowed secured claim is **not less than the allowed amount** of such secured claim; and

4. If the payments are periodic, that shall be in equal monthly amounts.

To determine the allowed secured claim, Congress provides in 11 U.S.C. § 506(a) that a creditor who has a lien to secure its claim can have both an allowed secured claim and an allowed unsecured claim arising out of one obligation. The allowed secured claims is:

(1) An allowed **claim of a creditor secured by a lien on property** in which the

> estate has an interest, . . ., **is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property**, . . ., and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim.

Debtor is correct that Congress has created an exception from the limitations of 11 U.S.C. § 1322(b)(2) for Creditors balloon payment note that has come due under the original terms of the note on April 1, 2020 - which is before the last payment will be made on a plan in this case (assuming one is confirmed). Creditor's claim may be valued as provided in 11 U.S.C. § 506(a) to determined the allowed secured claim and the secured claim amount be paid as provided in 11 U.S.C. § 1325(a)(5).

Debtor has filed as "Reply" pleadings, additional evidence of value and a Broker's Prior Opinion. Dckts. 181, 182, 177.

In the Opposition, Creditor reasonably requests the opportunity to conduct discovery and have an interior appraisal conducted. Debtor attempting to slip in the Broker's Price Opinion as a "Reply" document clearly requires such discovery request be granted.

At the February 25, 2020, the court continued the hearing to allow for discovery and the filing of supplemental pleadings.

Supplemental Pleadings

Creditor filed the Declaration of Appraiser Lynn W. Johnson, accompanied by the Appraisal Report, in support of Creditor's Opposition on April 6, 2020. Dckt. 198. Lynn W. Johnson is a licensed real estate appraiser in the state of California who has been working as a licensed real estate appraiser since 2005. *Id.* After personally inspecting the property, both the interior and exterior, and comparing the Property with other properties in the area, it is her opinion that the Property, as of the date of filing of the instant case (March 1, 2019), had a current market value of $513,000.00.

Debtor replied with what Debtor refers to as a "more refined Broker Price opinion" and the Declaration of Osceola Winnumucca Stephenson in support of the Reply. Dckt. 209, 210. Osceola Winnumucca is a real estate person licensed in California. Declaration, Dckt. 209. After a physical examination of the Property on February 8, 2020, Declarant values the property, as of March 1, 2019, at $470,000.00. Declarant arrived at this value due to several features of the residence:

a. No high ceilings
b. No steeply pitched roof
c. $96,050.00 worth of necessary repairs due to lack of maintenance since its construction
d. House was built with defective windows that have caused dry rot
e. 29 windows need replacement due to water damage
f. Major systems not in proper working order
g. Heating and air system did not function properly
h. Main floor ceiling water intrusion to be replaced due to dry rot damage

Declarant points out that Creditor's Appraisal Report did not address the repairs the Property needs.

Review of Expert Testimony

Evidence Presented by Movant Debtor

The court begins with the evidence of value presented by Debtor. Osceola Stephenson's declaration was filed on April 21, 2020. Dckt. 209. In it, Stephenson testifies that he is licensed as a real estate agent by the State of California and works with Red Dog Real Estate. He has prepared his Broker's Price Opinion ("BPO") for the value of the Property as of March 1, 2019 (the date this bankruptcy case was filed). The BPO is filed as an exhibit with his Declaration. BPO, Dckt. 210.

The BPO states that in its As-Is condition, the Property has a Probable Sales Price Value of $465,000 with a 90-day marketing period and $475,000 with a 180-day marketing period. BPO, Value Estimation section; *Id.*

In the BPO Stephenson identifies ($96,050) in repairs needed for the Property which are taken into account in Stephenson developing his value opinion. He states the Property is in fair condition, with immediate repairs to be taken by the buyer to include replacement of windows and that "major systems" not being in "proper working order."

Stephenson identifies three listing comparables that he uses and three closed sales comparables (all with sales dates of January 2019), for which the properties are within 0.3 miles of the Property. *Id.*, p. 2.

In his Declaration, Stephenson explains his condition and style considerations. Dckt. 209. He also discusses water damage caused by leakage at the windows and the need for the replacement of 29 windows. He also testifies that the heating and air conditioning system did not "function properly" (but did not explain what did not work) and that it needs to be replaced. He also provides testimony as to the repairs for the damage caused by the water intrusion.

Stephenson also discusses that the valuation provided in the appraisal testimony, which while consistent with that of Stephenson in considering comparable properties, it did not take into account the damages and necessary repairs that a buyer would consider.

Evidence Presented by Creditor

Creditor has provided the Declaration and Appraisal Report of Lynn Johnson. Dckt. 198 (Appraisal Report Exhibit attached to the Declaration). The Declaration and Appraisal Report review Johnson's experience and knowledge to provide expert witness testimony. Johnson testifies that the Property was inspected, interior and exterior, as part of Johnson's acts in coming to an opinion of $513,000.00 for the value of the Property.

In the Appraisal Report, Johnson identifies three comparable property sales, with the comparables 0.9 miles to 1.62 miles from the Property. Appraisal Report page 2 of 6; Dckt. 198. The three comparables are for sales in April 2018, December 2018, and January 2019.

For the valuation, in the Supplemental Addendum (Dckt. 198 at 12), Johnson states

> The subject is of good quality construction that conforms to the local

> neighborhoods in quality and design. . . The subject features moderate upgrades and has some unique design features to include coffered ceilings in the dining room, but does not appear to have any recent updating. The kitchen has upgraded cabinetry, granite counters and back splash, standard grade appliances, and tile flooring. . . **Overall the dwelling appears in average to fair condition** and **water staining was noted on the ceiling areas in the family room / kitchen areas due to apparent leaking**. It is **recommended that a professional be consulted to mitigate further damage**. . . There is also a large hole in the corner of the ceiling hallway near the half bathroom (see photo addendum). It is unclear why this exists as no water damage was noted in the immediate area.
>
> . . .
>
> All utilities were on at the time of inspection and mechanical systems appear to be functioning in a normal manner. . .

Johnson includes pictures of the Property. Dckt. 198 at 19-22. The picture of the rear of the home shows garbage, appliances, and other "junk" strewn around the patio. *Id.* at 19. A side view picture appears to a structure with junk piled up inside, including rolled up carpeting. *Id.* at 20.

The picture titled "Water Damage in Ceiling" (*Id.*) shows a large, jagged hole in the ceiling, with something hanging out of the hole (which the court could not identify even when the picture was enlarged). Water stains on the ceiling to the right of the hole are visible.

There are two other water damage pictures from the family room, showing water stains near a ceiling fan. *Id.*

A picture of the garage shows it filled (but for a narrow walk way) with open boxes of "stuff." *Id.* at 21. It appears that Debtor has piled up "stuff" on "stuff," creating a disorganized pile of "stuff."

In another ceiling picture, there is a hole in the ceiling and wall where two walls meet. *Id.* It appears, that in addition to the hole, the crown molding on a wall is missing.

The last picture is one showing water damage and staining at a window. *Id.* at 22. Through the window, one can see into the backyard, filled with piles of "stuff," similar to what is piled up next to the back of the house on the patio.

Determination of Value

The evidence presented by both experts presents the court with documentation of there being significant damage to the Property. As shown by the photos and the Stephenson Declaration, there are multiple holes in the ceiling, water damage in the ceiling and windows, and the need for significant repairs. Additionally, the photographs further show a lack of maintenance in and around the Property, including the trash and "stuff" piled in around the house on the patio, in the backyard, and in the garage.

Creditor's appraiser opinion of value is $513,000. While acknowledging that there is significant damage to the structure, she makes no clear adjustments for it. Rather, her Appraisal Report

states that investigation is required.

The three comparables used by Johnson, Creditor's expert, in the Appraisal Report had sales prices of $510,000, $520,000, and $525,000. In getting to the $513,000 value for the Property, she makes no adjustment for condition, stating in the Appraisal Report that the Property and the three comparable are all of Good Construction and in Average Condition. Appraisal Report, p. 2 of 6; Dckt. 198. There is nothing provided by Johnson to indicate that the three comparables were "Average Condition" properties with water stained ceilings, a gaping hole in the ceiling and another hole in the wall, water damage around the windows, and no treatment or repairs for the obvious and significant visible and the hidden damage to the structure.

Stephenson, the Debtor's expert, states that his starting value is in line with Johnson, but then he makes a downward adjustment for ($95,000) of repairs. Actually, it appears that Johnson may have started with a higher value or has not made a full adjustment of ($95,000) in coming to his opinion of $470,000 (based on a one hundred and twenty day marketing period, which is not commercially unreasonable).

While opining for the BPO that the repair costs are ($95,000), there is no other testimony from a contractor or other construction expert. The court recognizes that though real estate professionals do have knowledge of real property values and have addressed adjusting sales prices due to repairs, they are not contractors or construction experts.

From the evidence presented, the court determines that the value of the property securing Creditor's claim is $470,000. That is within $40,000 - $50,000 of Johnson's comparables, without any adjustment for damages.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Value Collateral and Secured Claim filed by Wanda Collier-Abbott ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearing Motion to Value Collateral and Secured Claim of RRA CP Opportunity Trust 2 ("Creditor") is continued to 3:00 p.m. on May 5, 2020.
>
> Pursuant to District Court General Order 612, no persons are permitted to appear in court unless authorized by order of the court. All appearances of parties and attorneys shall be telephonic through CourtCall, which advises the court that it is waiving the fee for the use of its service by *pro se* (not represented by an attorney) parties through June 1, 2020. **The contact information for CourtCall to arrange for a phone appearance is: (866) 582-6878**.

41. **19-27862-E-13 DPC-1** **SHAVINA/DONALD THOMAS** **Richard Jare** **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **3-17-20 [61]**

Final Ruling: No appearance at the April 28, 2020 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, on March 17, 2020. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

The hearing on the Objection to Confirmation of Plan is continued to 3:00 p.m. on May 5, 2020.

Continuance of April 28, 2020 Hearing

Due to other complex matters (including one being prosecuted by Debtor's counsel in another case) and a series of COVID-19 meetings and conferences for the judge to whom this case is assigned, the hearing is continued to ensure that the judge has a full opportunity to consider the pleadings filed.

REVIEW OF MOTION

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

A. Shavina Denise Thomas and Donald Wayne Thomas ("Debtor") are delinquent in plan payments.

B. Plan's Additional Provisions alter priority claims treatment without agreement or consent from creditors.

C. Failure to identify 2019 tax refunds on Schedule B.

D. Schedule I may not accurately reflect Debtor's actual income.

DISCUSSION

Trustee's objections are well-taken.

Delinquency

Debtor is $600.00 delinquent in plan payments, which represents multiple months of the $300.00 plan payment. Before the hearing, another plan payment will be due. According to Trustee, the Plan in § 2.01 calls for payments to be received by Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Debtor's Counsel addresses this delinquency in his Declaration filed in support of the Motion. Dckt. 67. Counsel testifies under penalty of perjury that he has personal knowledge that Debtor made a payment of $600.00 on March 12, 2020. *Id.* at 1. Counsel testifies that he obtained printouts of the TFS Trustee Payment System website which he filed as Exhibit (Dckt. 68). *Id.* at 3. He further testifies that proof of payment was shown to the Trustee at the March 12 Meeting of Creditors. *Id.* at 5.

Priority Claims Not Paid in Full

A debtor's Plan must provide for all priority debt, unless the creditor agrees to other treatment. 11 U.S.C. § 1322(a)(2). According to Debtor's Additional Provisions under Section 7.03: "The Plan shall complete regardless of whether or not these § 507(a)(1)(B) obligations are paid in full. As Debtor's plan is a PRO TANTO with respect to class 5 claim, the plan shall complete at the stated term, whether or not this Priority obligation is paid in full." This provision amends §3.12.

Debtor argues that under §1322(a)(4), *pro tanto* treatment of the AFDC claim is allowed without the consent of the creditor. That section provides for claim entitled to priority under section 507(a)(1)(B). Further arguing that this is a distinct term of that of subsection (a)(2) which defines that consent is required if this was a priority IRS debt. Debtor adds that this class of creditor normally boycotts most chapter 13 proceedings.

In looking at Debtor's response, it states that this is a "preliminary response" in light of this being an Objection to Confirmation filed using the Local Bankruptcy Rule 9014-1(f)(2) procedure which allows opposition to be stated orally at the hearing and the court setting a briefing schedule as warranted.

Debtor's Opposition provides a **multi**-colored font response and citation to the Cornell University website.

The Trustee's Objection is based in part on the Plan not providing to pay claims in full. Just as many parties and their attorneys believe that one need only utter the magical incantation of "11 U.S.C. § 105(a) and the judge can make up the law," Debtor throws the words "PRO TANTO" (all capital letters in original) at the court. Debtor does not provide the court with a definition of this term or why it is relevant to the discussion. [FN. 1.]

FN. 1. The court notes that Debtor's counsel advises the court that the law library is closed and his law firm does not subscribe to any online legal research services. It is strange that in the 21st Century a attorney would not have either a LEXIS or Westlaw subscription as part of the standard legal office setup.

Using the Ballentine's Law Dictionary, obtained through LEXIS, the following definition of pro tanto is provided:

> pro tanto
>
> For so much; for as far as it goes; to such an extent.

So, in using this term, the court understands the Debtor's position is that "the priority claims get what they get, and they can't throw a fit."

The Trustee's monochromatic Objection points the court to 11 U.S.C. § 1322(a)(2), asserting that priority claims must be paid in full through the plans, unless the creditor agrees otherwise. The section of the Bankruptcy Code cited by the Trustee states:

> § 1322. Contents of plan
>
> (a) The plan—
>
> > (1) shall provide for the submission of all or such portion of future earnings or other future income of the debtor to the supervision and control of the trustee as is necessary for the execution of the plan;
> >
> > (2) shall provide for the full payment, in deferred cash payments, of all claims entitled to priority under section 507 of this title, unless the holder of a particular claim agrees to a different treatment of such claim;

11 U.S.C. § 1322(a), the four requirements of which are stated in the conjunction "and," rather than a disjunctive "or" allowing the plan to provide one or the other.

In reviewing the claims register in this case, no priority claim has been filed - either by the creditor or the Debtor. In the Plan, Debtor lists a priority claim of $100.00. Plan, ¶ 3.12; Dckt. 12. This amount has been stated subject to the certifications as provided in Federal Rule of Bankruptcy Procedure 9011.

The Trustee's objection does not direct the court to a specific priority claim, but to the PRO TANTO language Debtor has added to the additional provisions for what is a "nickel and dime" claim stated in the Plan.

Going to Debtor's Schedule E/F, a creditor identified as DCSS, CA with a priority claim of $100.00 is listed. Dckt. 22 at 13. This is stated to be a community debt for Domestic Support Obligations. Debtor adds the following typed at the bottom of the page:

Id. Debtor's Schedules are filed under penalty of perjury and are statements of factual information - not guesses. If Debtor is obligated to pay California Child Support Services for unpaid child support obligations which Debtor did not pay and the State made public support payments, he should have attached demand and payment letters, statements, and his records of payment - not guesses.

Assuming that there is a priority obligation, the obligation identified is one that can be paid in full in the first month.

If not and the actual amount is greater than the $100 stated by Debtor under penalty of perjury on the Schedules, the Debtor directs the court to paragraph (4) of 11 U.S.C. § 1322(a) which states:

> (a) The plan—
> . . .
> (4) notwithstanding any other provision of this section, may provide for less than full payment of all amounts owed for a claim entitled to priority under section 507(a)(1)(B) only if the plan provides that all of the debtor's projected disposable income for a 5-year period beginning on the date that the first payment is due under the plan will be applied to make payments under the plan.

Thus, 11 U.S.C. § 1322(a)(4) which states that priority claims must be paid in full, for one type of priority claim less than the full amount is required to be paid if the debtor provides for paying all of the debtor's disposable income into the plan for five years. That one type of priority claim is:

> (a) The following expenses and claims have priority in the following order:
>
> (1) First:
>
> (A) Allowed unsecured claims for domestic support obligations that, as of the date of the filing of the petition in a case under this title, are owed to or recoverable by a spouse, former spouse, or child of the debtor, or such child's parent, legal guardian, or responsible relative, without regard to whether the claim is filed by such person or is filed by a governmental unit on behalf of such person, on the condition that funds received under this paragraph by a governmental unit under this title after the date of the filing of the petition shall be applied and distributed in accordance with applicable nonbankruptcy law.
>
> (B) Subject to claims under subparagraph (A), **allowed unsecured claims for domestic support obligations** that, as of the date of the filing of the petition, **are assigned** by a spouse, former spouse, child of the debtor, or such child's parent, legal guardian, or responsible relative **to a governmental unit** (unless such obligation is assigned voluntarily by the spouse, former spouse, child, parent, legal guardian, or responsible relative of the child for the purpose of collecting the debt) **or are owed directly to or recoverable by a governmental unit under applicable nonbankruptcy law**, on the condition that funds received under this paragraph by a governmental unit under this title after the date of the filing of the petition be applied and distributed in accordance with applicable nonbankruptcy

law.

11 U.S.C. § 507(a)(1)(A), (B).

Thus, there is not a requirement, as a matter of federal law, that if the domestic support obligation was not voluntarily assigned to or owed by operation of nonbankruptcy law to a governmental unit, then the plan does not require them to be paid in full.

The 11 U.S.C. § 507(a)(1)(B) is a priority claim, just second in priority to the first priority domestic support claims. The discussion on this provision in Collier on Bankruptcy is broad, stating:

> [5] Special Provision for Domestic Support Obligations Owed to Governmental Units; § 1322(a)(4)
>
> Section 1322(a)(4) recognizes the fact that some debtors have very large support obligations owed to governmental units, and that requiring those obligations to be paid in full in a chapter 13 plan would make chapter 13 impossible for such debtors. This in turn could leave those debtors saddled with debt, and perhaps subject to foreclosure or repossessions, all of which would greatly undercut their ability to support their dependents, defeating the purpose of other provisions that were intended to increase support payments.
>
> To alleviate this problem, section 1322(a)(4) excuses the debtor from making full payment of domestic support obligations entitled to priority under section 507(a)(1)(B) if the plan provides that all of the debtor's disposable income for five years, the maximum plan period, is devoted to plan payments. This provision enables a chapter 13 debtor to cure a mortgage default, save a family vehicle, or otherwise use chapter 13 even if the debtor cannot pay the domestic support obligations owed to a governmental unit in full. Of course, those obligations remain nondischargeable, so the debtor would continue to be obligated to pay them after the case is concluded.

8 Collier on Bankruptcy, Sixteenth Edition, ¶ 1322.03.

Thus, 11 U.S.C. § 1322(a)(4) allows a plan to provide for those assigned domestic support obligations to be paid partially, with the Debtor having to pay after the case since they are nondischargeable. But the plan must make provision for them.

Additionally, the provisions of 11 U.S.C. § 1322(a)(4) are applicable as a matter of law, not a "Plan Created Modification." Here, the additional provisions do not provide for payment of $X a month for the 11 U.S.C. § 507(a)(1)(B) priority claims, but that the plan does not state how they will be necessarily treated. Then the Debtor adds that even if not paid in full, "the plan shall complete at the stated term." Whether the Plan is completed or not is as provided in the Bankruptcy Code, not as created by Debtor in the Plan. Then, the Plan purports to determine a creditor's claim based upon the creditor using the word "assigned," "welfare," or "AFDC."

Review of Schedules, Plan, and Prior Cases

Between the two debtors, this is their third case since September 2018. The debtors each filed a prior separate case, and now this joint case.

On Schedule I in the current case, Debtor states having gross income of $3,338 a month. Dckt 22 at 26-27. Debtor speculates having an additional $700 in future roommate income and using a tax refund of $350 a month to cover expenses. On Schedule A/B Debtor anticipates $1,900 in 2019 tax refunds. *Id.* at 6. This would provide five months of such coverage.

Once the tax refund comes in, that would give Debtor $3,688 a month. However, on Schedule J Debtor lists having expenses of ($4,088). It is not explained how Debtor, even with the tax refund, is able to make up the difference.

A Chapter 13 Plan is necessary for Debtor due to the loans secured by the Debtor's vehicles, which amounts are well in excess of said vehicles. The court has issued two orders valuing the two secured claims. Orders, Dckts. 58, 59.

Feasibility

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). According to Trustee, Debtor admitted at the Meeting of Creditors that they have not yet filed the return for 2019 but that they expect a refund. Such refund is not identified on Schedule B. Moreover, at the Meeting Debtor admitted that roommate income listed on Schedule I is being replaced by a new job. Debtor has failed to file Schedules correcting any of this information. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

In their Response, Debtor asserts that Schedule B and C already exempt the 2019 tax refunds. A review of Debtor's Schedule C, filed on January 17, 2020, shows that Debtor has exempted Federal 2019 pro rata for 1040 in the amount of $1,600.88 and State 2019 pro rata form 1040 in the amount of $300.88 under C.C.P. § 703.1240(b)(5). Dckt. 22. No Objection to Claimed Exemptions has been filed by Trustee as of April 4, 2020.

At this juncture, Debtor has not provided the court with financial information to show that the plan can be performed. Additionally, Debtor needs to delete the additional provision purporting to create a PRO TANTO distribution and completion of plan, and create a provision for the 11 U.S.C. § 507(a)(1)(B) priority claims stating that these will be paid through the plan whatever monies remain after payment of the administrative expenses and secured claims.

Supplemental Pleadings

Debtor filed several documents. The first one filed on April 14, 2020, is titled "Debtor's 2nd Exhibit in Support of Opposition to Objection to Confirmation." Dckt. 72. There is one statement in this first page: "Proof of payment in the amount of $300.00 on April 13th, 2020[.]" *Id.* The second page seems to be a "print screen shot" of the TFS website purporting to show a processing transaction dated April 13, 2020 in the amount of $300.00 for Debtor Shavina Thomas. *Id.*

Three documents were filed on April 21, 2020: Supplemental Opposition, the Declaration of Richard Jare, and a Proposed Order filed as an Exhibit. The first one is the Supplemental Opposition to

Objection to Confirmation. Dckt. 74. This one page Opposition states the following:

1. Supplemental Schedules I and J were filed today.

2. Supplemental evidence of addition trustee payment has been filed subsequent to the last hearing.

3. The Exhibit with the proposed form for the Order confirming plan clarifies in plan English the some of the NonStandard Provisions.

Id.

The Declaration of Richard Jare declares having personal knowledge of the following (Dckt. 75):

1. That notwithstanding his status as Debtor's counsel, he is permitted to authenticate exhibits since the facts they purport to establish are not expected to be in material dispute.

2. The exhibit filed on April 14, 2020 evidencing payment by TFS "was filed subsequent to the prior declaration authenticating such evidence, so this new declaration is being provided."

3. The website screen shots as to case status "are ordinary course of business records available to attorneys for Debtors in Chapter 13 cases."

4. Counsel obtained the printouts filed as exhibits through websites maintained by Trustee.

5. His experience is that the website seldom contain data errors and Debtor's payment status is likely to be accurate.

Id.

Last but not least is the Proposed Order Confirming Plan. Dckt. 77. The order filed as an exhibit for purposes of providing clarification as to NonStandard Provisions reads as follows:

A. IT IS ORDERED that the plan filed as docket item 12 on January 3, 2020 is confirmed.

B. IT IS FURTHER ORDERED that:

1. The debtor shall immediately notify, in writing, the Clerk of the United States Bankruptcy Court and the trustee of any change in the debtor's address;

2. The debtor shall immediately notify the trustee in writing of any termination, reduction of, or other change in the employment of the

debtor; and

3. The debtor shall appear in court whenever notified to do so by the court.

C. IT IS FURTHER ORDERED that the attorney's fees for the approved, $499.00 of which was paid prior to the filing of the petition. The balance of $2,200.00, provided that the attorney and debtor have complied with Local Bankruptcy Rule 2016-1(c), shall be paid by the trustee from plan payments at the rate specified in the plan.

D. IT IS FURTHER ORDERED that, pursuant to 11 U.S.C. § 1323, the plan is amended as follows, for Nonstandard provisions §7.03 replace that section with the following language : Section 7.03. Which amends §3.12 , This plan specifies that any claims (namely DCSS) which are identifiable as to be entitled to priority under 11 U.S.C. §507(a)(1)(A) shall be paid in full under class 5 of the plan. This plan specifies that any claims (namely DCSS) which are identifiable as to be entitled to priority under 11 U.S.C. §507(a)(1)(B), so identified or identified as either "assigned or welfare or AFDC" shall be paid prior to the payment of Class 7 general unsecured claims but need not be paid in full.