UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

May 5, 2020 at 2:00 p.m.

ALL APPEARANCES MUST BE TELEPHONIC
(Please see the court's website for instructions.)

1.	**20-20819-C-13** **DPC-1**	**MICHAEL/ERIN FERREIRA** **Peter Macaluso**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK** **4-14-20 [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.

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 April 14, 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. At the hearing **----------**.

The Objection to Confirmation of Plan is sustained.

The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis the debtors, Michael Dean Ferreira and Erin Jean Ferreira ("Debtor") are $1,850.00 delinquent in plan payments, having paid nothing into the plan to date. Dckts. 15, 17.

Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

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

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

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

2.	**20-20250-C-13 JSO-1**	**RICHARD/JOHNNA HOWARD Jeffrey Ogilvie**	**MOTION TO VALUE COLLATERAL OF WELLS FARGO BANK 4-2-20 [23]**

THRU #4

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, Creditor, parties requesting special notice, and Office of the United States Trustee on April 2, 2020. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of Wells Fargo Bank, N.A., dba Wells Fargo Auto ("Creditor") is xxxxx

The Motion filed by Richard Lynn Howard and Johnna Faye Howard ("Debtor") to value the secured claim of Wells Fargo Bank, N.A., dba Wells Fargo Auto ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 25. Debtor is the owner of a 2008 Chevy Suburban ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $6,548.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

CREDITOR'S OPPOSITION

On April 24, 2020, Creditor filed an Opposition. Dckt. 38. Creditor argues that even though shelter-in-place has prevented an appraisal of the Vehicle, the NADA guide shows the Vehicle's retail value is $11,450.00.

DISCUSSION

The secured claim is asserted to be $9,897.28 for this now thirteen (13) model year old vehicle. The evidence presented by Debtor of value is Debtor's own testimony. However, Debtor's testimony is only that Kelly Blue Book states that the value is $6,548.00, taking into account that the

vehicle has a broken transfer case which Debtor has been unable to repair. Declaration, Dckt. 25. The Declaration makes reference to "Exhibits in Support," but does not clearly authenticate any exhibits.

With respect to the condition of the vehicle, Debtor does clearly testify that there is unrepaired damage to the vehicle consisting of a "broken transfer case."

Unauthenticated Exhibit B is what appears to be a screen shot of the Kelly Blue Book website showing the private party value range for a 2008 Chevrolet Suburban to be $5,416-$7,634. Even if properly authenticate, the private party sale value is not the correct valuation to use for this Motion. 11 U.S.C. § 506(a)(2) requires it to be the replacement value, which is defined in that paragraph to be the price a retail merchant would charge, taking into account the condition of the vehicle.

Creditor counters with an opposition, asserting that the value of the vehicle is $11,450 for such a vehicle with 183,000 miles on it. Creditor takes exception to Debtors making reference to a Kelly Blue Book valuation since Debtor's do not establish themselves as an "expert" in using Kelly Blue Book valuations. The person providing a Kelly Blue Book valuation or NADA valuation is not the "expert," but merely the witness authenticating the "Market quotations . . . or other compilations that are generally relied upon by the public or by persons in particular occupations." Fed. R. Evid. 803(17).

Creditor provides the court with unauthenticated Exhibit C that appears to be a NADA valuation screen shot. It shows a "clean" retail value of $11,450. Creditor seeks to use this clean, showroom- and floor-ready value for the vehicle and does not take into account a the broken transfer case testified to by Debtor to make even a theoretical adjustment from the showroom ready value on the unauthenticated NADA Report.

Scope of the Financial Fight

At this point, the fight is between the $9,548 secured claim and the $6,548 in value. If there is a damaged transfer case (and the court will not presume that the Debtor would commit perjury and falsely testify), then the $11,450 is significantly overstated. There may be other issues, damage, dings, and scratches on a vehicle with 183,000 miles on it, but none are testified to by Debtor.

Thus, the chasm between these parties is the grand sum of $3,000 on an obligation that tops out at $9,500.

Neither party having presented the court with properly authenticated valuations of the vehicle and it appearing that there is damage to the vehicle that Creditor has failed to take into account, leaving the court without credible evidence to make a decision.

The evidentiary issue in dispute and evidence lacking, this matter will be set for an evidentiary hearing. Presuming 15 hours of time for each attorney in preparing the direct testimony statements, assembling the evidence, preparing the evidence binders, preparing the evidentiary hearing statements, filing evidentiary objections, responding to evidentiary objections, and then coming to court for a half-day evidentiary hearing, it appears that the cost of the litigation for each side would be $5,625 (presuming a modest billing rate of $375 an hour in light of the modest amount in dispute). The attorney's fees alone exceed the total claim at issue.

At the hearing, the parties reported to the court that they had communicated and

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 Richard Lynn Howard and Johnna Faye Howard ("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 xxxxxxxx

3.	**20-20250-C-13** **APN-1**	**RICHARD/JOHNNA HOWARD** **Jeffrey Ogilvie**	**CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A.** **3-11-20 [14]**

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

Local Rule 9014-1(f)(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 11, 2020. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is xxxxxxx

WELLS FARGO BANK, N.A., dba WELLS FARGO AUTO ("Creditor") holding a secured claim opposes confirmation of the Plan based on a dispute over the valuation of Creditor's secured claim.

The Debtor filed a Response noting that a Motion To Value has been set for hearing May 5, 2020. Dckt. 23.

APRIL 7, 2020 HEARING

At the April 7, 2020 hearing the court noted the plan's feasibility hangs on the outcome of Debtor's Motion to Value (Dckt. 23) and continued the hearing. Civil Minutes, Dckt. 32.

DISCUSSION

At the hearing, xxxxxxxxxxxxxx.

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 WELLS FARGO BANK,

N.A., dba WELLS FARGO AUTO ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Confirmation of Plan is xxxxxxx

4.	**20-20250-C-13 DPC-1**	**RICHARD/JOHNNA HOWARD Jeffrey Ogilvie**	**CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 3-16-20 [18]**

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

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 16, 2020. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is xxxxxxx

The Chapter 13 Trustee, David Cusick ("Trustee"), filed this Objection on the basis that the plan proposes valuing the secured claim of Wells Fargo, and no motion has been filed for that purpose.

The Debtor filed a Response noting that a Motion To Value has been set for hearing Mat 5, 2020. Dckt. 23.

APRIL 7, 2020 HEARING

At the April 7, 2020 hearing the court noted the plan's feasibility hangs on the outcome of Debtor's Motion to Value (Dckt. 23) and continued the hearing. Civil Minutes, Dckt. 33.

DISCUSSION

At the hearing, xxxxxxxxxxxxxx.

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 Plan is xxxxxxx

5.	**20-21063-C-13 GC-1**	**DANIEL VOLLER AND LINDA ARCE-VOLLER Julius Cherry**	**MOTION TO VALUE COLLATERAL OF CARMAX BUSINESS SERVICES, LLC 3-18-20 [16]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on March 17, 2020. By the court's calculation, 49 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 CarMax Business Services, LLC ("Creditor") is xxxxx

The Motion filed by debtors Daniel Peter Voller and Linda Irene Arce-Voller ("Debtor") to value the secured claim of CarMax Business Services, LLC ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 18. Debtor is the owner of a 2014 Kia Soul ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $6,425.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

CREDITOR'S OPPOSITION

Creditor filed an Opposition on April 2, 2020. Dckt. 22. Creditor argues that the NADA Guide shows the Vehicle's value is actually $8,500.00.

DEBTOR'S REPLY

Debtor filed a Reply on April 24, 2020. Dckt. 30. Debtor's counsel argues that Creditor's declaration (Dckt. 23) is hearsay within hearsay, and not admissible evidence. Debtor's counsel argues further that the retail value of the Vehicle is affected by necessary repairs, including replacement of the Vehicle's catalytic converter.

DISCUSSION

As addressed above, Debtor asserts that the value of the Vehicle is $6,425.00. This is Debtor's opinion of value based on the debtor having conducted an internet investigation. Motion, p. 1:26-28; Dckt. 16. In the Declaration, Debtor testifies that the Vehicle has 77,000 miles on it, has a scratch on the driver's side door, and needs a catalytic converter. Dckt. 18. Debtor provides owner opinion testimony that the replacement value of this vehicle is $6,425.00. *Id.*

Creditor presents as evidence a (loosely) authenticated NADA valuation of $8,500 for the Vehicle. Declaration and Exhibit C; Dckts. 23, 24. Exhibit C states that the Clean Retail Value is $8,500.00.

Debtor roars back with an evidentiary objection that the Declaration of John Eng, a legal secretary for the creditor's attorney, attempts to lay a foundation for the NADA valuation. It is asserted that the Declaration identifying the NADA valuation is "hearsay within hearsay" and must be stricken.

First, Debtor does not identify how the Declarant identifying the NADA report is hearsay. It may be that the Declarant does not clearly state that the Declarant sat down at the computer, went to the NADA website, typed in the information for the Vehicle, and that Exhibit C is a true and accurate copy of the information provided by NADA. Debtor is correct, the Declaration cuts the corners and could be more clearly written. On the other hand, does Debtor have a good faith belief that the Declarant did not obtain the NADA report?

Second, Debtor does not explain the hearsay within hearsay with respect to the NADA report itself. While the court appreciates a discussion of the Federal Rules of Evidence, every experienced attorney has been around the Kelly Blue Book/NADA block enough times to know the hearsay exception in Federal Rule of Evidence 803(17) that further discussion of it is unnecessary.

The Debtor is correct that a showroom floor ready retail valuation of $8,500.00 stated in the NADA report is the starting point, not ending. Though aware of the testimony as to the scratch and the need to replace the catalytic converter, Creditor has made no effort to account for it in advancing an actual value.

With respect to such repair expense, in the reply Debtor provides an unauthenticated Exhibit A, titled Catalytic Converter Replacement Cost. This internet document (as opposed to a quote by a mechanic in a simple declaration) states that the cost is around $2,750. Exhibit A, Dckt. 31. But without proper authentication and a hearsay exception identified, this fails as credible evidence.

Proof of Claim No. 1-1 has been filed for Creditor. No information is provided by Debtor as to what occurred when counsel for Debtor attempted to contact Creditor about the claim or whether, in light of the amount of the claim, it was determined more cost effective to immediately commence the Contested Matter.

If it costs a couple thousand dollars to replace the catalytic converter (if necessary) in the Vehicle, then a value of around $6,500 would not be unreasonable (assuming that a dealer would not have to do any other maintenance or repairs to get the vehicle to showroom floor ready status).

At the hearing, **xxxxxxxxxx**

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 debtors Daniel Peter Voller and Linda Irene Arce-Voller ("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 xxxxxxx

6.	**20-22066-C-13 DRE-1**	**GREGORY/CHERIE BORGERSON Randall Ensminger**	**MOTION TO EXTEND AUTOMATIC STAY 4-17-20 [8]**

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 17, 2020. By the court's calculation, 18 days' notice was provided. 14 days' notice is required.

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

The Motion to Extend the Automatic Stay is granted.

The debtors, Gregory Roger Borgerson and Cherie Marquez Borgerson ("Debtor"), seek to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 18-23460) was dismissed on October 2, 2019, after Debtor fell delinquent in plan payments. *See* Order, Bankr. E.D. Cal. No. 18-23460, Dckt. 75, October 2, 2019. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because Debtor was seeking a loan modification which did not go through, and the second mortgage creditor obtained relief from stay. Debtor argues this case will be successful because Debtor's income has increased since the prior case, in part because Debtor's children no longer need as much supervision.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11

U.S.C. § 362(c)(3)(B). As this court has noted in other cases, Congress expressly provides in 11 U.S.C. § 362(c)(3)(A) that the automatic stay **terminates as to Debtor**, and nothing more. In 11 U.S.C. § 362(c)(4), Congress expressly provides that the automatic stay **never goes into effect in the bankruptcy case** when the conditions of that section are met. Congress clearly knows the difference between a debtor, the bankruptcy estate (for which there are separate express provisions under 11 U.S.C. § 362(a) to protect property of the bankruptcy estate) and the bankruptcy case. While terminated as to Debtor, the plain language of 11 U.S.C. § 362(c)(3) is limited to the automatic stay as to only Debtor. The subsequently filed case is presumed to be filed in bad faith if one or more of Debtor's cases was pending within the year preceding filing of the instant case. *Id.* § 362(c)(3)(C)(i)(I). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); *see also* Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209–10 (2008). An important indicator of good faith is a realistic prospect of success in the second case, contrary to the failure of the first case. *See, e.g.*, *In re Jackola*, No. 11-01278, 2011 Bankr. LEXIS 2443, at *6 (Bankr. D. Haw. June 22, 2011) (citing *In re Elliott-Cook*, 357 B.R. 811, 815–16 (Bankr. N.D. Cal. 2006)). Courts consider many factors—including those used to determine good faith under §§ 1307(c) and 1325(a)—but the two basic issues to determine good faith under § 362(c)(3) are:

A. Why was the previous plan filed?

B. What has changed so that the present plan is likely to succeed?

In re Elliot-Cook, 357 B.R. at 814–15.

Debtor has sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

The Motion is granted, and the automatic stay is extended for all purposes and parties, unless terminated by operation of law or further order of this 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 Extend the Automatic Stay filed by Gregory Roger Borgerson and Cherie Marquez Borgerson ("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 the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes and parties, unless terminated by operation of law or further order of this court.

7.	**20-21070-C-13** **DPC-1**	**BRIAN HAMILTON** **Pro Se**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **4-14-20 [17]**

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 (pro se) on April 14, 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. At the hearing ----------.

The Objection to Confirmation of Plan is sustained.

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

A. The debtor, Brian Keith Hamilton, did not attend the Meeting of Creditors on April 9, 2020.

B. Debtor's proposed plan is blank and provides no plan payment amount, plan length, percent dividend to unsecured claims, estimate as to priority claims, or any claims to be paid.

DISCUSSION

Trustee's objections are well-taken.

Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341.

Appearance is mandatory. *See* 11 U.S.C. § 343. Attempting to confirm a plan while failing to appear and be questioned by Trustee and any creditors who appear represents a failure to cooperate. *See* 11 U.S.C. § 521(a)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Additionally, the current proposed plan is not really a plan at all. It's a blank form signed by the Debtor without any plan terms. That is reason to deny confirmation. 11 U.S.C. § 1325(a)(6).

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is sustained, and the Plan is not confirmed. [FN.1]

FN. 1. The court notes that this is not Debtor's first recent case in this District. Chapter 13 case 19-20957 was filed on February 19, 2019 and dismissed on September 24, 2019. Chapter 13 case 18-20994 was filed on February 22, 2018 and dismissed on October 10, 2018.

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

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

8. **17-25487-C-13** **MARILYN ZAMORA** **MOTION TO SELL**
PLG-1 **Steven Alpert** **4-21-20 [23]**

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

Local Rule 9014-1(f)(1) Motion—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 April 21, 2020. By the court's calculation, 14 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 the debtor, Marilyn Soclo Zamora ("Movant"), to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here, Movant proposes to sell her one-half interest in the real property commonly known as 2701 Soho Lane, Fairfield, California ("Property").

The proposed purchaser of the Property is Gene Corpuz, and the sale price of the property is $425,000. Debtor represents that after paying off all liens on the Property, sale proceeds will be enough to complete the case.

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response indicating non-opposition on April 28, 2020. Dckt. 30.

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.

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 debtor, Marilyn Soclo Zamora ("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 Movant is authorized to sell pursuant to 11 U.S.C. § 363(b) to Gene Corpuz or nominee ("Buyer"), the Property commonly known as 2701 Soho Lane, Fairfield, California ("Property"), on the following terms:
>
> A. The Property shall be sold to Buyer for $425,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 26, 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. 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.

9. **20-21093-C-13 MBW-1** **STEVEN/KIMBERLY KENT** **Mohammad Mokarram** **OBJECTION TO CONFIRMATION OF PLAN BY CAHP CREDIT UNION 4-13-20 [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, Debtor's Attorney, the Chapter 13 Trustee, and the US Trustee on April 13, 2020. By the court's calculation, 22 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.

Creditor CAHP CREDIT UNION ("Creditor") filed this Objection opposing confirmation of the debtors, Steven Delmar Kent and Kimberly Kent's ("Debtor"), proposed Chapter 13 plan.

Creditor argues its claim is provided for as Class 3, but provides evidence that Debtor claims the collateral is in a storage facility that Debtor does not know the name or address of. Creditor primarily concludes this shows the plan was not proposed in good faith. [FN. 1]

FN. 1. This is an interesting situation, and not one that is new to the court. A little more than a decade ago this court was presented with a situation where the debtor purported to not know where a vehicle was located. After hearing the debtor's basis for the lack of knowledge as to the location of property of the bankruptcy estate and failure to comply with the order of the court to disclose the location of the property, the court issued a corrective sanction – being taken into the custody by the U.S. Marshal and held in the County Jail. After the fifth day of sitting in the County Jail, mid-Friday afternoon that debtor recalled the location of the vehicle and had his counsel notify the court so that the information could be

provided and the debtor released from the corrective incarceration.

Given that the vehicle is property of the bankruptcy estate and the Debtor has the fiduciary duties and responsibilities of a trustee over such property of the bankruptcy estate, the court imagines that whatever mis-communications are occurring, Debtor' s counsel will have the location of the vehicle to disclose in court at the May 5, 2020, as well as the procedure for physically turning over the vehicle as part of the Plan confirmation.

DISCUSSION

Creditor's argument's are well-taken. If Debtor has possession of the collateral securing Creditor's claim, and does not actually intend to surrender the collateral, then providing for that claim as a Class 3 means the plan was not proposed in good faith and cannot be confirmed. 11 U.S.C. § 1325(a)(3).

Additionally, the evidence provided is enough to cast doubt as to the plan's feasibility, and Debtor has proffered no contrary evidence. That is reason to deny confirmation. 11 U.S.C. § 1325(a)(6).

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by creditor CAHP CREDIT UNION ("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 to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

FINAL RULINGS

10. **20-20715-C-13** **FOUAD MIZYED**
20-2016
JL-1

MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF REMOVAL
3-19-20 [10]

MIZYED V. FAY SERVICING, LLC

Pursuant to the stipulation of the parties, the court issued an Order (Dckt. 21) continuing the hearing on the Motion To Dismiss to June 23, 2020 at 1:30p.m.

11. **20-20734-C-13 DPC-1** **CHRISTINE CONRAD**
Jeffery Ogilvie

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
3-16-20 [12]

THRU #12

Final Ruling: No appearance at the May 5, 2020, hearing is required.

Local Rule 9014-1(f)(2) Objection—Hearing Not 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 16, 2020. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

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

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

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

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

A. The plan proposes valuing the secured claim of Citibank, N.A. But, no motion has been filed to initiate that process.

B. Debtor did not attend the March 12, 2020, Meeting of Creditors.

APRIL HEARING

At the April 7, 2020, hearing the court granted a continuance to allow Debtor to prosecute a motion to value secured claim, and to attend the continued Meeting of Creditors. Dckt. 23.

STATUS REPORT

Trustee filed a Status Report indicating that Debtor attended the Meeting of Creditors, but Debtor's counsel did not, meaning the Meeting was continued to May 14, 2020. Dckt. 28. The Trustee also notes the Debtor's Motion To Value is set for May 5, 2020, hearing.

DISCUSSION

A review of the docket shows the court has granted the debtor's motion to value secured claim of Citimortgage Inc. Dckt. 16.

But, the Meeting of Creditors was not concluded due to Debtor's counsel's absence.

The court shall continue the hearing to allow Debtor and Debtor's counsel to attend the continued Meeting of Creditors.

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 is continued to June 2, 2020 at 2:00 p.m.

12. **20-20734-C-13 JSO-1** **CHRISTINE CONRAD** **Jeffrey Ogilvie** **MOTION TO VALUE COLLATERAL OF CITIMORTGAGE, INC. 4-6-20 [16]**

Final Ruling: No appearance at the May 5, 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 Creditor on April 6, 2020.. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of Citimortgage Inc. ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $0.00.

The Motion to Value filed by Christine Ann Conrad ("Debtor") to value the secured claim of Citimortgage Inc. ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 19. Debtor is the owner of the subject real property commonly known as 23413 Chism Trail, Cassel, California ("Property"). Debtor seeks to value the Property at a fair market value of $246,350.00 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).

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $292,885.00. Proof of Claim, No. 9. Creditor's Second deed of trust secures a claim with a balance of approximately $28,323.00. Schedule D, Dckt. 1. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, the value of the collateral, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Value Collateral and Secured Claim filed by Christine Ann Conrad ("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 Citimortgage Inc. ("Creditor") secured by a second in priority deed of trust recorded against the real property commonly known as 23413 Chism Trail, Cassel, California, 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 $246,350.00 and is encumbered by a senior lien securing a claim in the amount of $292,885.00, which exceeds the value of the Property that is subject to Creditor's lien.

13. **20-21645-C-13 MJD-1** **JOSEPH/BRANDY BOBERG** **Matthew DeCaminada** **MOTION TO VALUE COLLATERAL OF FIRST INVESTORS SERVICING CORPORATION** **4-2-20 [10]**

Final Ruling: No appearance at the May 5, 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 Chapter 13 Trustee, Creditor, and Office of the United States Trustee on April 2, 2020. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

The Motion to Value Collateral and Secured Claim has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). 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 First Investors Servicing Corporation ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $10,000.00

The Motion filed by Joseph Edward Boberg and Brandy Michelle Boberg ("Debtor") to value the secured claim of First Investors Servicing Corporation ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 41. Debtor is the owner of a 2015 Dodge Ram 1500 HFE Pickup 2x2 ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $10,000.00 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).

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred in May 2016, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $18,069.00. Schedule D, Dckt. 1. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of $10,000.00, 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 Joseph Edward Boberg and Brandy Michelle Boberg ("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 First Investors Servicing Corporation ("Creditor") secured by an asset described as 2015 Dodge Ram 1500 HFE Pickup 2x2 ("Vehicle") is determined to be a secured claim in the amount of $10,000.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $10,000.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

14. **20-20938-C-13** **DEANDRA JACKSON** **MOTION TO VALUE COLLATERAL OF**
PGM-2 **Peter Macaluso** **PORTFOLIO RECOVERY**
ASSOCIATES, LLC
4-1-20 [38]

Final Ruling: No appearance at the May 5, 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 Chapter 13 Trustee, Creditor, and Office of the United States Trustee on April 1, 2020. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of Portfolio Recovery Associates, LLC ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $4,500.00.

The Motion filed by Deandra R. Jackson ("Debtor") to value the secured claim of Portfolio Recovery Associates, LLC ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 41. Debtor is the owner of a 2011 Chrysler 200 ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $4,500.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on October 25, 2013, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $20,660.02. Proof of Claim, No. 7. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of $4,500.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Value Collateral and Secured Claim filed by Deandra R. Jackson ("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 Portfolio Recovery Associates, LLC ("Creditor") secured by an asset described as 2011 Chrysler 200 ("Vehicle") is determined to be a secured claim in the amount of $4,500.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $4,500.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

15. **20-20157-C-13 MJD-4** | **JOSE/JEANNETTE PAGTALUNAN** **Matthew DeCaminada** | **MOTION TO EMPLOY NORCAL GOLD, INC. AS BROKER(S)** **4-4-20 [56]**

Final Ruling: No appearance at the May 5, 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 Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 4, 2020. By the court's calculation, 31 days' notice was provided. 28 days' notice is required.

The Motion to Employ 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 Employ is granted.

The debtors Jose Mari Padilla Pagtalunan and Jeannette Rojas Pagtalunan ("Debtor") seek to employ Norcal Gold Inc. dba RE/MAX Gold Laguna as a broker ("Broker") pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330.

Debtor argues that Broker's appointment and retention is necessary to market and sell debtor's real property commonly known as 7404 Song Sparrow Way, Elk Grove, California.

Thu-Duyen Cao, a licensed real estate agent with Broker, testifies she has represented over 400 buyers and sellers in real estate transactions. Cao testifies she and the company do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

Pursuant to § 327(a), a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals, including attorneys, to represent or assist the trustee in carrying out the trustee's duties under Title 11. To be so employed by the trustee or debtor in possession, the

professional must not hold or represent an interest adverse to the estate and be a disinterested person.

Section 328(a) authorizes, with court approval, a trustee or debtor in possession to engage the professional on reasonable terms and conditions, including a retainer, hourly fee, fixed or percentage fee, or contingent fee basis. Notwithstanding such approved terms and conditions, the court may allow compensation different from that under the agreement after the conclusion of the representation, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of fixing of such terms and conditions.

Taking into account all of the relevant factors in connection with the employment and compensation of Broker, considering the declaration demonstrating that Broker does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Norcal Gold Inc. dba RE/MAX Gold Laguna as Broker for the Chapter 13 Estate on the terms and conditions set forth in the – Exclusive Authorization and Right to Sell Residential Listing Agreement filed as Exhibit A, Dckt. 59. Approval of the commission is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

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 Employ filed by the debtors Jose Mari Padilla Pagtalunan and Jeannette Rojas Pagtalunan ("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 Employ is granted, and Debtor is authorized to employ Norcal Gold Inc. dba RE/MAX Gold Laguna as a broker as Broker for Debtor on the terms and conditions as set forth in the – Exclusive Authorization and Right to Sell Residential Listing Agreement filed as Exhibit A, Dckt. 59.
>
> **IT IS FURTHER ORDERED** that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.