

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

Pursuant to District Court General Order 617, 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.**

May 12, 2020 at 3:00 p.m.

1.	<u>20-20111-E-13</u> ROSS SANCHEZ	MOTION TO CONFIRM PLAN
	<u>MJD-3</u> Matthew DeCaminada	4-7-20 [44]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on April 7, 2020. By the court's calculation, 35 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 ~~XXXXX~~.

The debtor, Ross Joe Sanchez (“Debtor”), seeks confirmation of the Amended Plan. The Amended Plan provides for Debtor having already paid a total of \$7,400.00 through April 2020, followed by monthly payments of \$4,330.00 for months 5 through 60 of the plan, with a 0% dividend to unsecured claims totaling \$16,192.11. Amended Plan, Dckt. 46. 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 28, 2020. Dckt. 50. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor may not be able to afford Plan payments.

DISCUSSION

The Trustee asserts that Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). A review of Debtor’s Schedule J shows Debtor has a monthly net income of \$3,725.69. Dckt. 21. This is after subtracting Debtor’s expenses totaling \$6,143.02 from monthly income of \$9,868.71 as stated on Debtor’s Schedule I. *Id.* The proposed Plan payment of \$4,330.00 is a \$555.00 increase from the previous payment of \$3,775.00. See Dckt. 30.

No explanation has been provided for this increase nor amended Schedules have been filed to support this increase. Thus, Debtor has insufficient income to support proposed plan payments. Without an accurate picture of Debtor’s financial reality, the court cannot determine whether the Plan is confirmable.

At the hearing, ~~XXXXXX~~

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

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on April 27, 2020. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of Patelco Credit Union ("Creditor") is granted, and Creditor's secured claim is determined to have a value of \$34,275.00.

The Motion filed by Rowdy Yates Draper ("Debtor") to value the secured claim of Patelco Credit Union ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 16. Debtor is the owner of a 2015 GMC Yukon ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$34,275.00 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 March 26, 2019 to secure a debt owed to Creditor with a balance of approximately \$42,250.00. Declaration, Dckt. 16.

Debtor asserts that although the loan for the vehicle was not made more than 910 days ago, a

portion of the amount financed consists of negative equity from a trade-in vehicle, in the amount of \$4,881.00, as well as a Service Contract in the amount of \$3,500.00 and a Debt Cancellation Agreement in the amount of \$895.00. Thus, the non-purchase money components of the loan total \$9,276.00.

Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of \$34,275.00, the value of the collateral. *See* 11 U.S.C. § 506(a).

As addressed by the Ninth Circuit Court of Appeals in *Americredit Financial Services, Inc. v. Penrod*, 611 F.3d 1158, 1161-1163(9th Cir. 2010), the purchase money security interest is for the purchase of the vehicle, not for other financing the creditor wants to provide - such as additional credit to pay off debt owed on a different vehicle, maintenance contracts and the like:

The term "purchase money security interest" is not defined in the bankruptcy code. In bankruptcy, property interests are usually defined by state law. *See Butner v. United States*, 440 U.S. 48, 54-57, 99 S. Ct. 914, 59 L. Ed. 2d 136 (1979). California has adopted the relevant portion of Revised Article 9 of the Uniform Commercial Code ("U.C.C.") and the U.C.C. Official Comment. Purchase money security interest is defined in U.C.C. § 9-103, and in California Commercial Code § 9103.

"Purchase money collateral' means goods or software that secures a purchase money obligation." Cal. Comm. Code § 9103(a)(1). "Purchase money [**8] obligation' means an obligation of an obligor incurred as all or part of the price of the collateral or for value given to enable the debtor to acquire rights in or the use of the collateral if the value is in fact so used." Cal. Comm. Code § 9103(a)(2).

...

With all of the foregoing as background, we arrive at the key issue of this [*1162] appeal -- the meaning of "price" for the purposes of the purchase money security interest. The definition is found in the Official Comment.

As used in subsection (a)(2), the definition of "purchase-money obligation," the "price" of collateral or the "value given to enable" includes obligations for expenses incurred in connection with acquiring rights in the collateral, sales taxes, duties, [**9] finance charges, interest, freight charges, costs of storage in transit, demurrage, administrative charges, expenses of collection and enforcement, attorney's fees, and other similar obligations.

U.C.C. § 9-103 cmt. 3.

...

In sum, we find that a creditor does not have a purchase money security interest in the "negative equity" of a vehicle traded in during a new vehicle purchase.

Americredit Financial Services, Inc. v. Penrod, 611 F.3d 1158, 1161-1163(9th Cir. 2010).

Here, after deducting out the other financing provided by Creditor, the actual purchase money security interest for the Vehicle is for (\$33,800.00) of the secured claim, Debtor having proportionately

(based on the dollar amount of the respective parts of the credit extended) applied pre-petition payments to both the purchase money portions and to the non-purchase money portion of the financing.

However, the vehicle is determined to be \$34,275. While not part of the purchase money financing, the additional amounts are part of the secured claim to the extent there is value above the purchase money portion of the claim.

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 Rowdy Yates Draper (“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 Patelco Credit Union (“Creditor”) secured by an asset described as 2015 GMC Yukon (“Vehicle”) is determined to be a secured claim in the amount of \$34,275.00, 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 \$34,275.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

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

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 April 7, 2020. By the court’s calculation, 35 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.

The debtors, Victor Cruz Chavez and Olvera Montserrat (“Debtor”) seek confirmation of the Chapter 13 Plan. The Plan provides for monthly plan payments of \$250.00 for 60 months, and a 100% dividend for unsecured claims totaling \$3,823.00. Plan, Dckt. 59. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

On April 28, 2020, the Chapter 13 Trustee, David Cusick (“Trustee”), filed a Response indicating non-opposition provided that the order confirming clarifies that Debtor intends to pay 100% to unsecured claim and receive a 2.5% interest of that was Debtor’s intention. Dckt. 61. Otherwise, Trustee opposes confirmation if the plan is instead calling for a 2.5% dividend without fair notice to creditors with unsecured claims. *Id.*

At the hearing, Counsel for Debtor **XXXXXXXXXX**

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, Victor Cruz Chavez and Olvera Montserrat (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Debtor’s Amended Chapter 13 Plan filed on April 7, 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.

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 19, 2020. By the court's calculation, 54 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied.

The debtor, Lee Ann Newton ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for monthly payments of \$2,510.00 for 60 months, and a 100% dividend to unsecured claims totaling \$12,677.15. Amended Plan, Dckt. 39. 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 28, 2020. Dckt. 54. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor is delinquent in plan payments.
- B. Debtor may not be able to afford plan payments and comply with the Plan.

DISCUSSION

Delinquency

The Chapter 13 Trustee asserts that Debtor is \$5,018.00 delinquent in plan payments, which represents multiple months of the \$2,510.00 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 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 is currently delinquent in plan payments.

Under Debtor's previous plan, Debtor maintained and provided a declaration from her brother stating that he would financially assist Debtor. See Declaration, Dckt. 28. Such declaration or assurance is not presented with the current proposed plan.

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

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

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Lee Ann Newton ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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 25, 2020. By the court's calculation, 48 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

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

The debtor, Elysha Noelle Lopez ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for monthly plan payments of \$2,980.00 for months 1-2, then \$3,302.00 through month 60 of the plan, and 0% dividend to unsecured claims totaling \$96,000.00. Amended Plan, Dckt. 23. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

In support of the Plan, Debtor includes the Declaration of Casey Rogers, Debtor's fiancé, who declares that he will contribute at least \$1,050.00 a month to help with the plan. Dckt. 25. Debtor also includes the Declaration of Glenda Rogers, the fiancé's mother, who declares that she will contribute \$500.00 to help with the plan. Dckt. 24.

CHAPTER 13 TRUSTEE'S RESPONSE

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response on April 28, 2020. Dckt. 31. Trustee requests the court take into consideration that Debtor has not yet paid the \$3,302.00 that was due on April 25, 2020. *Id.*

DISCUSSION

The Chapter 13 Trustee asserts that Debtor is \$3,302.00 delinquent in plan payments, which represents one month of the \$3,302.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

On May 5, 2020, Debtor filed a Response. Dckt. 34. Debtor informed counsel that she could only make a \$1,200.00 payment. *Id.* at ¶2. Due to the Covid-19 crisis, Debtor has encountered financial problems: she was furloughed and out of work for two weeks and is waiting for the stimulus check and unemployment so that she can makeup the amount she is missing. *Id.* Debtor requests the court either confirm the plan so that Trustee can disburse what has already been paid into the plan or for the court to continue the hearing for 60 days to give Debtor time to catch up.

At the hearing, **XXXXXXXXXX**

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

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

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

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

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

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 April 2, 2020. By the court's calculation, 40 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).

<p>The Motion to Confirm the Amended Plan is XXXXXX.</p>
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The debtors, Justin Lee Robinson and Angela Alyssa Robinson ("Debtor"), seek confirmation of the Amended Plan. The Amended Plan provides for monthly plan payments of \$0.00 for months 1 and 2, followed by monthly plan payments of \$4,514.00 for months 3 through 60, and a 0% dividend to unsecured claims totaling \$169,400.00. Amended Plan, Dckt. 31. 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 28, 2020. Dckt. 43. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor has requested a forbearance on the mortgage which was approved by the Creditor but Trustee is uncertain as to property taxes, insurance, and manner of curing default resulting from the forbearance.

DISCUSSION

Forbearance Issue

Trustee asserts that Debtor's current plan calls for Trustee to make mortgage payments in the amount of \$2,984.24 to Creditor Nationwide/Mr. Cooper, subject to change by Creditor's proof of claim or a notice of mortgage payment change. Opposition, at ¶ 1. Creditor's Proof of Claim #6 shows an ongoing payment of \$3,052.37, which includes escrow fees and insurance.

On April 21, Creditor filed a Notice of Debtor's Request for Forbearance due to the Covid-19 Pandemic. Dckt. 40.

Trustee seeks clarification as to what this Notice means. Trustee notes that the notice appears to indicate that Creditor is willing to forbear payment for six months, but it does not address whether Creditor is extending the repayment term or requiring a balloon payment at the end of the loan. Opposition, at ¶ 1. As it pertains to the Plan, Trustee is uncertain as to whether he is allowed to pay less than the Plan provides for. *Id.* at ¶ A. Further, the plan does not project curing for the forbearance payment period. *Id.* at ¶ B. But Trustee believes that the Plan will complete in 60 months provided that curing the forbearance payments occurs after the term of the Plan. *Id.* at ¶ C.

The Trustee is identifying cutting edge issues concerning a forbearance granted as required by the CARES Act or one voluntarily granted by a creditor. Congress provides for such forbearance as a "pause button," giving time for the creditor and borrower to figure out how to deal with the unpaid amounts on the obligation.

This will lead to confirmed plans, during which the payment otherwise provided for a creditor will be the subject of a forbearance, and during the forbearance period not paid by the trustee and the plan payment amount reduced.

Here, the forbearance has been granted for a claim with a post-petition contract installment payment of (\$2,984.24) and a monthly payment of (\$797.82) additional amount to cure the arrearage from pre-petition defaults. Plan, Class 1; Dckt. 31.

The Notice of Forbearance provided by Creditor identifies the forbearance being for the following payments due from Debtor:

The Debtors recently contacted Creditor requesting a forbearance period of 6 months and have elected to not tender mortgage payments to Creditor that would come due on the mortgage starting 04/01/2020 through 09/01/2020.

Notice, p. 1:25-27; Dckt. 40. While not clearly stated, the above indicates that there is a forbearance for any payments, whether the currently monthly installment or the plan required arrearage payment (the plan modifying the contractual obligation that is binding on the parties^{FN. 1} for the period of April 2020 through September 2020.

FN. 1. *Enewally v. Washington Mutual Bank (In re Enewally)*, 368 F.3d 1165, 1172 (9th Cir. 2004); *Trulis v. Barton*, 107 F.3d 685, 691 (9th Cir. 1995).

Thus, the question for the court is whether the forbearance is for the (\$2,984.24) monthly payment installment only, or if it includes the (\$797.82) additional arrearage cure under the agreement as modified by the Chapter 13 Plan (rather than Debtor continuing to whittle down the arrearage interest free).

At the hearing, **XXXXXXXXXX**

~~----- 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, Justin Lee Robinson and Angela Alyssa Robinson ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~----- **IT IS ORDERED** that the Motion is granted, and Debtor's Amended Chapter 13 Plan filed on April 2, 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.~~

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 23, 2020. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

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

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

- A. Debtor failed to provide tax returns.
- B. Debtor refused to provide a copy of his social security card.
- C. Plan is not Debtor's best effort.
- D. Debtor failed to complete Plan form.
- E. Debt may not be properly classified.
- F. Plan fails to account for filed claim.

G. Plan payment does not allow for Trustee's fee.

DISCUSSION

Trustee's objections are well-taken.

Failure to Provide Tax Returns

The Chapter 13 Trustee argues that Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A)(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 Social Security Number

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

Failure to Provide Disposable Income

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.

Trustee argues that the Plan might not be Debtor's best effort on the basis that Debtor has a monthly net income of \$2,275.00, and after expenses listed on Schedule J of \$1,300.00, Debtor has a disposable income of \$975.00. Yet, Debtor's plan calls for monthly payments of \$73.92, and does not provide for unsecured claims.

Incomplete Plan

11 U.S.C. § 1325(a)(1) provides for confirmation of a plan if it complies with Chapter 13 provisions and other applicable Code provisions. Here, Debtor has proposed a plan that is woefully lacking in compliance with the Bankruptcy Code. Debtor lists two creditors under Class 2 but fails to provide a claim amount and whether secured by real property. Moreover, Section 3.12(c) of the Plan is blank. Debtor failed to list a percentage dividend and the total amount of unsecured debt. Thus, the Plan does not comply with 11 U.S.C. § 1325(a)(1).

Improper Classification

Debtor has classified creditors Vivint Solar and Pacific Gas and Electronic as both secured under Class 2(A) and unsecured under Schedule F (DN 1, Page 23). PG&E's Proof of Claim 2-1 shows a claim for \$1,737.39, but does not claim security.

Insufficient Plan Payments

Creditor alleges that the Plan is not feasible. 11 U.S.C. § 1325(a)(6). First, an additional claim, that of Creditor Quantum3 Group LLC has now been filed for \$228.08 which is not provided for in the plan. Proof of Claim No. 3. Second, the proposed plan payments provide for creditors but does not allow for the Trustee fee to be paid as required by the U.S. Trustee under 28 U.S.C. § 586. Thus, the Plan may not be confirmed.

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.

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.~~**

Continuance of April 28, 2020 Hearing

At the April 28, 2020 hearing the court was advised that counsel for the Debtor was unable to attend the hearing, and another attorney from counsel's firm requested a continuance. The court granted the continuance.

Nothing further has been filed by counsel or another attorney in his firm.

REVIEW OF MOTION

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.
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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.~~

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.~~

Continuance of April 28, 2020 Hearing

At the April 28, 2020 hearing the court was advised that counsel for the Debtor was unable to attend the hearing, and another attorney from counsel's firm requested a continuance. The court granted the continuance.

Nothing further has been filed by counsel or another attorney in his firm.

REVIEW OF MOTION

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.~~

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.

Continuance of April 28, 2020 Hearing

At the April 28, 2020 hearing the court was advised that counsel for the Debtor was unable to attend the hearing, and another attorney from counsel's firm requested a continuance. The court granted the continuance.

Nothing further has been filed by counsel or another attorney in his firm.

REVIEW OF MOTION

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.~~

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.~~

Continuance of April 28, 2020 Hearing

At the April 28, 2020 hearing the court was advised that counsel for the Debtor was unable to attend the hearing, and another attorney from counsel's firm requested a continuance. The court granted the continuance.

Nothing further has been filed by counsel or another attorney in his firm.

REVIEW OF MOTION

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 separately 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.

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~~————— 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.~~

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.~~

Continuance of April 28, 2020 Hearing

At the April 28, 2020 hearing the court was advised that counsel for the Debtor was unable to attend the hearing, and another attorney from counsel's firm requested a continuance. The court granted the continuance.

Nothing further has been filed by counsel or another attorney in his firm.

REVIEW OF MOTION

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).

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Creditor has not filed an Opposition.

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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.

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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.~~

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.~~

Continuance of April 28, 2020 Hearing

At the April 28, 2020 hearing the court was advised that counsel for the Debtor was unable to attend the hearing, and another attorney from counsel's firm requested a continuance. The court granted the continuance.

Nothing further has been filed by counsel or another attorney in his firm.

REVIEW OF MOTION

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 oppose 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.~~

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 March 7, 2020. By the court's calculation, 66 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 ~~XXXXX~~.

The debtor, Rafael Palos De La Torre ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for monthly payments of \$2,827 by the Debtor, payment of some secured claims, and a 0.00% dividend to creditors holding general unsecured claims. Amended Plan, Dckt. 22. 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 28, 2020. Dckt. 22. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor's Plan may not be feasible on the basis that the tentative rulings posted for four motions for valuing secured claims and a motion to avoid a lien on which the Plan relies have been denied.

DISCUSSION

Trustee's concerns are well-taken.

Debtor's Reliance on Motion to Avoid Judicial Lien

A review of Debtor's Plan shows that it relies on the court avoiding the judicial lien of QuarterSpot, Inc. Debtor filed a Motion to Avoid the Judicial Lien of QuarterSpot, Inc. on March 31, 2020. Dckt. 39. The motion was continued to May 12, 2020, the same day as the hearing on this Motion. The Motion to Avoid the Lien has been denied. With the court denying the avoidance of this lien, the Plan may not be feasible. 11 U.S.C. § 1325(a)(6).

Debtor's Reliance on Motions to Value Secured Claim

A review of Debtor's Plan shows that it relies on the court valuing the secured claims of Independent Bank and Yuba-Sutter Economic Development Corp. Debtor filed a Motion to Value the Secured Claim of Creditor Independent Bank on March 31, 2020. Dckt. 25. Debtor also filed three separate motions to value the secured claim of Creditor Yuba-Sutter Economic Development Corp on March 31, 2020 and April 2, 2020. Dckts. 29, 32, 59. The motions were continued to May 12, 2020, the same day as the hearing on this Motion. All three motions have been denied. With the court denying the valuing of both of these claims, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

As Trustee points out, the court has found that the motions filed by Debtor are not a valuation issue. Instead what is being determined is 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. Such matters must be determined by Adversary Proceeding. Fed. R. Bankr. P. 7001(2).

At the hearing, **XXXXXXXXXX**

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

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

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

~~————— The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, 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 to Confirm the Amended Plan is denied, and the proposed Chapter 13 Plan is not confirmed.~~

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.

Continuance of April 28, 2020 Hearing

At the April 28, 2020 hearing the court was advised that counsel for the Debtor was unable to attend the hearing, and another attorney from counsel's firm requested a continuance. The court granted the continuance.

REVIEW OF MOTION

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**.

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 February 25, 2020. By the court’s calculation, 34 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The court is continuing the hearing to allow the Parties to address final amendments and work to get a plan that can be completed in this case.

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 ~~XXXXX~~.

The debtors, Stephen Anthony Gingold and Karen Michelle Gingold (“Debtors”), seeks confirmation of the Amended Plan. The Amended Plan provides for payments of \$3,364.95 for six (6) months, followed by \$3,425.00 for the balance of the plan, with a 0% percent dividend to unsecured claims totaling \$66,410.00. Amended Plan, Dckt. 52. 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 March 17, 2020. Dckt. 64. Trustee opposes confirmation of the Plan on the basis that:

- A. The proposed Plan does not pay in full the priority claim of Internal Revenue Service.
- B. The proposed Plan fails to properly account for mortgage arrearage.
- C. Debtors are serial filers.

Trustee filed a Status Report on March 24, 2020. Dckt. 69. Trustee continues to oppose

confirmation and suggest the court continue the matter to May 12, 2020 at 3:00 p.m.

CREDITOR'S OPPOSITION

Polycomp Trust Company, Custodian FBO Brian L. Kraft IRA ("Creditor") holding a secured claim filed an Opposition on March 17, 2020. Dckt. 67. Creditor opposes confirmation of the Plan on the basis that:

- A. The proposed Plan fails to cure Creditor's prepetition arrearage.

DISCUSSION

Serial Filers

A review of Debtors history with this court shows a total of 16 bankruptcy cases and two (2) adversary proceedings between both debtors since 1997. Both adversary proceedings resulted in 4 year bans, one for Debtor Stephen Gingold, and the other applied as to Debtor Karen Gingold.

Debtors must explain why they think they will succeed through the instant case when prior cases have not.

Failure to Complete Plan Within Allotted Time

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Chapter 13 Trustee, the Plan will complete in 554 months (46 years) due to Debtors failure to provide for full payment of the Internal Revenue Service in the amount of \$117,888.15 and mortgage arrearage in the amount of \$16,181.30. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

In his Response, Debtor Stephen Gingold asserts under penalty of perjury that the IRS has provided notice and does not oppose confirmation of the plan based on the agreement that the tax lien survives the completed chapter 13 and discharge. Further, that the Plan provides for payment in full of the priority claim of the IRS and it is only the secured portion that is treated differently and in a manner that the IRS has agreed not to oppose.

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 \$16,181.30 in pre-petition arrearage. Proof of Claim, 8-1. 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.

In Debtors' Response, Debtor testifies that:

[T]he amount stated in the First Amended Plan does look like a miscalculation and so we will be asking that the amount stated in the objection be the amount

paid on the arrearage, the Class 2 claim. If that can be done in the order confirming, we would appreciate that, otherwise, we will be having a Second Amended Plan prepared and noticed for hearing in May stating the payment at \$388.00 per month for 53 months per the request of the objection.

Declaration, ¶ 4.

Debtor also notes that he has reviewed Trustee's Status Report and agrees with Trustee on continuing the hearing on this motion as it will provide Debtors and Counsel time to confer with Trustee and Creditor and get the amended plan "tuned" up for confirmation.

Supplemental Declaration

Debtor filed a Supplemental Declaration on April 28, 2020 addressing the court's and Trustee's concerns over their long history with bankruptcy filings. Dckt. 75. Debtor Stephen Gingold testifies under penalty of perjury that their bad history with bankruptcy filings stems from filing without legal help. The cases were filed by Co-Debtor Karen Gingold who did not fully understand bankruptcy and errors were made. Debtors were unaware of the ramifications that have adversely affected them to this day, including not properly addressing their tax debt.

Debtor testifies that the instant case will succeed for the following reasons:

- A. Debtors have hired Counsel who has provided them with much needed information and explained the realities and consequences of the previous bankruptcies.
- B. Debtors have changed their bookkeeping procedures at home including budgeting practices and setting aside funds to make the plan payments. Debtors have also reduced their food and household supplies budget.
- C. Debtors have addressed their IRS situation by getting their tax returns up to date and filed. All of the old unfiled returns back as far as 2013 have been filed.
- D. Covid-19 has not affected their employment/income.
- E. Debtor requests that in the order confirming the plan, the plan payment be increased by \$455.00 for a total of \$3,480.00 beginning with month seven (7) so creditors as outlined in the Plan are paid.
- F. The proposed Plan addresses Creditor Polycomp's arrearage.
- G. As to the IRS priority, such claim will be paid in full. As to the IRS secured claim, the plan services the lien but does not pay it in full and extends beyond the term of their Chapter 13. The IRS has agreed to the principal balance unpaid during the Plan shall survive the Debtor's discharge.

Decision

Debtor's Chapter 13 Plan, as further amended, is to provide for curing (\$16,181.30) in arrearage on their residence, continue making the current post-petition mortgage payment of (\$1,466.00), pay for a 2019 vehicle, a 2017 vehicle, and a 2013 vehicle; and to whittle down a portion of (\$164,252.60) in secured and priority taxes owed to the Internal Revenue Service.

Debtor Stephen Gingold testifies under penalty of perjury that while the plan pays the priority tax claim of the Internal Revenue Service in full, it merely "services" the Internal Revenue Service secured claim. Declaration ¶ 7, Dckt. 75.

In Amended Proof of Claim No. 6-3 filed on February 26, 2020, the Internal Revenue Service states its claim as:

Total Claim.....	(\$164,252.60)
Secured Portion.....	(\$108,000.00)
Priority Portion.....	(\$ 9,888.15)
General Unsecured.....	(\$ 46,364.45)

The collateral for the secured claim is all of the Debtors' assets. In light of the equity in Debtor's residence and retirement accounts, there is value for the secured portion of the claim.

The Debtors have provided a written confirmation from the Internal Revenue Service to Debtor's counsel, confirming that under the Chapter 13 Plan, at the end of the Plan there will still be over (\$100,000.00) owed for the secured taxes and that the Debtors will not have their personal liability for such taxes discharged (not merely that the tax lien continues to encumber the property). Exhibit 1, Dckt. 71.

Debtors have documented the consent of the IRS to the "maintenance" treatment for the secured claim and the Debtors agreeing that their personal liability for the Internal Revenue Service secured claim will not be discharged.

The proposed confirmation order filed as Exhibit 1, Dckt. 76, states that the "secured claim" shall "survive the Debtors' discharge as calculated pursuant to 26 U.S.C. §§ 6322 and 6503(h)."

26 U.S.C. § 6322 states the period during which a tax lien remains enforceable, stating until the obligation "is satisfied or becomes unenforceable by reason of lapse of time." 26 U.S.C. § 6503(h) states that the period of limitations for the Internal Revenue Service to collect tax obligations is suspended during the period that the filing of a bankruptcy case prohibits the Internal Revenue Service from attempting to collect the tax obligations.

The letter from the Internal Revenue Service (Exhibit 1, Dckt. 71) expressly states that the Plan and bankruptcy are not to discharge personal liability for the Debtors. However, the proposed order appears to merely state that the "secured claim" survives bankruptcy. As a matter of law, secured claims always survive bankruptcy, the discharge of a debtor not discharging a lien.

At the hearing, counsel for Debtors explained **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 Confirm the Chapter 13 Plan filed by the debtor, Stephen Anthony Gingold and Karen Michelle Gingold ("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 Chapter 13 Plan filed on February 19, 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.~~

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 Order to Show Cause is XXXXX.

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 imposed 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.

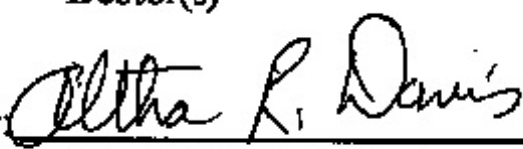
Chambers v. NASCO, Inc., 501 U.S. 32, 43 (1991); see *Price v. Lehitine*, 564 F. 3d at 1058.

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 contemtor 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**

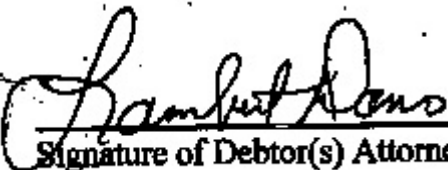
With the present case and the prior case, the court has Lambert Davis commencing bankruptcy cases for the estate of the deceased Altha Ruth Davis. These have been filed as Chapter 13 cases, with there being no attempt to prosecute them as Chapter 13 cases. Rather, it appears that the filings are being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

Debtor(s)
By 
Estate of Altha Ruth Davis

19-27242; Dckt. 11.

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


Signature of Debtor(s) Attorney or Pro Per Debtor

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).

MAY 12, 2020 HEARING

At the continued 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 Order to Show Cause having been considered by the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is **XXXXXXXXXX**

18.	<u>20-20955</u> -E-13	ESTATE OF ALTHA DAVIS Pro Se	CONTINUED ORDER TO SHOW CAUSE -FAILURE TO PAY FEES 3-27-20 <u>22</u>
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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter. 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 Order to Show Cause is XXXXX.

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.

MAY 12, 2020 HEARING

At the continued 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 Order to Show Cause having been considered by the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is **XXXXXXXXXX**

Tentative Ruling: The Motion to Confirm has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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.

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 2, 2020. By the court's calculation, 40 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 XXXXX.
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REVIEW OF MOTION

The debtor, Teresa Marie Gonsalves and Steven Michael Gonsalves ("Debtor"), seek confirmation of the Amended Plan. The Amended Plan provides for monthly Plan payments of \$1,875.00 commencing on January 25, 2020 for 55 months, and a 0.0% dividend for unsecured claims totaling \$160,459.25. Amended Plan, Dckt. 48. 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 January 28, 2020. Dckt. 48. Trustee opposes confirmation of the Plan on the basis that:

- A. The Plan does not work mathematically and as proposed will complete in 88 months.
- B. Debtor fails to explain and provide evidence for the increased deductions found in their amended Form 122C-2.
- C. Debtor's counsel should file a separate motion to have fees approved.
- D. It is unclear if Debtor has paid all child support arrearage listed on Schedule E.
- E. Debtor has failed to provide the required 521 documents.

DEBTOR'S REPLY

Debtor filed a Reply on February 3, 2020. Dckt. 74. Debtor's Reply will be discussed below.

DISCUSSION

Trustee's concerns are well taken.

Failure to Complete Plan Within Allotted Time

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Chapter 13 Trustee, the Plan will complete in 88 months due to the proofs of claim filed the IRS, Ally Financial and GM Financial not accounted for by the Plan. Debtor's Plan would complete in time if Debtor's pay in their total monthly net income stated on Schedule J of \$2,601.65. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

Debtor argues that the Plan will account for these claims by increasing the plan payment by \$157.00.

Failure to Provide 521 Documents

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

Debtor responds that Debtor has now provided pay advices to the Trustee but that Debtor has yet to file tax returns for 2015 and 2018. Debtor will also file an amended Schedule I to account for Debtor's employer and address, and that co-debtor is employed. Debtor filed an amended Statement of Financial Affairs on February 5, 2020. Dckt. 76.

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). The Plan may not be feasible on the basis that Debtor has failed to explain and provide evidence of the increased deduction in Form 122C-2 for mandatory contributions to retirement and union dues.

Furthermore, there is a discrepancy between Schedule E and Debtor's Declaration in support of the Plan. Schedule E lists domestic support obligations of \$46,554.00 to DCSS (Dckt. 1, at 20) and \$46,138 to Solano County Child Support Services (*Id.* at 22.).

Debtor's Declaration states that Debtor has domestic support obligations and that Debtor is "current." The court is unsure as to what "current" means. Whether Debtor is current as to post-petition child support payments or if Debtor has address the pre-petition arrearage. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

In summary, Debtor argues that the Trustee's concerns are adequate addressed by the following, as summarized by the court:

1. Debtor will increase plan payment by \$157.00.
2. The DCSS claim is nothing more but a duplicate of the Solano County and thus there is only one claim for \$46,138.00 in arrearage.
3. The amended Form 122C-1 corrects information on expenses and deductions that had been previously submitted and thus accounting for the deduction discrepancies.

"No Look" Fee

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 a "no look" fee in this case. Thus, counsel's fees will be reviewed under the standard loadstar analysis.

Debtor's present counsel responds that previous counsel will not be seeking fees related to this case, so that new counsel is only seeking the remainder of the "no look" fee.

Lastly, Debtor requests the objection should be continued so as to give Trustee time to review the amended Schedules, Statement of Affairs, and tax returns for 2015 and 2018.

By separate Motion Debtor has addressed this issue, with the Trustee now filing a statement of non-opposition to the no-look fee. Dckt. 87.

At the hearing, **XXXXXXXXXX**

~~_____ The Amended Chapter 13 Plan complies with 11 U.S.C. § 1322, 1325, 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 Chapter 13 Plan filed by 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 Motion is granted, Debtor's Amended Chapter 13 Plan filed on January 2, 2020, is confirmed, and 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.~~

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 20, 2020. By the court's calculation, 15 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.

The Motion to Extend the Automatic Stay is XXXXX.

Pete Aldret Garcia ("Debtor") seeks 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. 19-22037) was dismissed on March 7, 2020, after Debtor became delinquent in plan payments and failed to confirm a Plan. *See* Order, Bankr. E.D. Cal. No. 19-22037, Dckt. 118, March 7, 2020. 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 his tenants were late on payments which made him late on making his plan payment.

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.

At the hearing, opposition was stated and the parties requested time to meet and confer, with the court entering an interim order imposing the stay.

MAY 12, 2020 HEARING

At the hearing on May 12, 2020, the Parties reported **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 hearing on the Motion to Extend the Automatic Stay filed by Pete Garcia, 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 **XXXXXXXXXX**, 2020. Opposition shall be filed and served on or before **XXXXXXXXXX**, 2020, and Relies, if any, filed and served on or before **XXXXXXXXXX**, 2020.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 13, 2020. By the court's calculation, 22 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice).

The Motion to Sell Property 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.

The Motion to Sell Property is XXXXXXXXXX.
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The Bankruptcy Code permits Daniel Lawrence Brennan and Allison Lyn Brennan, Chapter 13 Debtor, ("Movant") to sell property of the estate under the confirmed plan after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here, Movant proposes to sell the real property commonly known as 11840 Gidaro Drive, Elk Grove, California ("Property").

The proposed purchaser of the Property is Michael and Karen Mester, and a summary of the terms of the sale are (the full terms and conditions are set forth in the Purchase Agreement, Exhibit A, Dckt. 183):

- A. Sale Price is \$1,099,000.00.
- B. Initial Deposit of \$15,000.00.
- C. Closing Date shall occur 45 days after acceptance of offer.
- D. Property sold As-Is.

- E. Broker's compensation of 6% of the purchase price of the property.

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: No other offers were presented to the court.

Trustee does not oppose the sale. Response, Dckt. 185. Trustee points out that the Plan called for a lump sum payment from this sale of \$359,000, with the expected proceeds to be paid into the plan, and \$25,019.46 paying for the Chase mortgage arrearage. *Id.* at 2. Under the current terms of the sale, after accounting for broker's fees and Creditor Chase's secured claim in the amount of \$725,003.24 (which includes the arrearage), Trustee expects to receive \$333,076.22 less escrow fees, costs and charges, provided that Trustee does a check swap with the title company to pay the arrearage. *Id.*

Creditor JP Morgan Chase Bank filed a Response in support of the sale. Response, Dckt. 187. Creditor does not oppose the sale provided that Creditor's claim is paid off in full, including the arrearage before it releases its lien on the property. *Id.* at 2, ¶ 1. Moreover, that Creditor be permitted to submit an updated payoff demand to the applicable escrow or title company facilitating the sale so that Creditor's claim is paid in full at the time the sale of the Property is finalized. *Id.* ¶ 2.

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 pay off Creditor's Chase claim and provide for a 100% percent payment to unsecured claims as called for in the plan.

No closing statement has been provided. However, given that the brokers have been approved their six percent (6%) broker's commission, the court calculates \$65,940.00 in broker fees. 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 6% percent commission.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 6004(h) stays an order granting a motion to sell for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the **ten** day stay period pursuant to Rules 4001(a)(3), to the extent applicable and 6004(g). The court takes the reference to Rule 6004(g) as a clerical error meaning Rule 6004(h).

Movant has not pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 6004(h), and this part of the requested relief.

Though Debtor could not state grounds for waiving the fourteen day stay of enforcement of an order approving the sale, and did not deem it more significant than a stock language line in the prayer for relief, the court can perceive such grounds. The sale will pay all claims, including unsecured in full. The buyer is ready to go. In this uncertain COVID-19 environment, there is a premium on getting the financial transactions that can be consummated completed. The court will "save" the Debtor from possible repercussions if the fourteen day stay was not waived due to the lack of grounds stated and during that fourteen days events occurred which resulted in the escrow not closing and a \$1.1 Million

sale was lost.

The fourteen day stay of enforcement is waived for cause.

Request for Sale Free and Clear of IRS and FTB Liens

At the hearing, Debtor requested that the order allow for the trustee to make demand for payment on the IRS and FTB secured claims, the liens be transferred to the amounts demanded, and the property be sold free and clear of any such liens. The request at the hearing was based on the court having issued orders pursuant to 11 U.S.C. § 506(a) valuing the claims and the IRS agreeing in the confirmed plan to a secured claim amount.

As addressed at the hearing, the 11 U.S.C. § 506(a) valuation is not the voiding of a lien or stripping off of the creditor's rights, but valuing the secured claim to be paid. Such valuation becomes final upon the debtor completing the plan. *See* discussion in *In re Frazier*, 448 B.R. 803 (Bankr. ED Cal. 2011), *affd.*, 469 B.R. 803 (ED Cal. 2012) (discussion of "lien striping" in Chapter 13 case).

Debtor referenced at the hearing there being a stipulated value for the IRS secured claim, which is included in the Modified Chapter 13 Plan (Dckt. 156, Additional Provisions). IRS Amended Proof of Claim, 2-2, states that its secured claim is \$478,861.71 and FTB Amended Proof of Claim 1-3 states only a priority and general unsecured claim (recognizing that the senior lien of the IRS wipes out all value in the property of the Debtor and estate).

The Motion does not request relief from the court pursuant to 11 U.S.C. § 363(f) for the sale of the property to be free and clear of these liens.

The court continues the hearing to allow counsel for Debtor to prepare a proposed order granting such relief, which shall be consented to by the IRS and FTB.

MAY 12, 2020 HEARING

At the continued hearing, counsel for the Debtors reported **XXXXXXXXXX**

FINAL RULINGS

22. [20-22036](#)-E-13 RUDY/APRIL RAYA MOTION TO VALUE COLLATERAL OF
[SDH-1](#) Scott Hughes SAFE CREDIT UNION
4-14-20 [8]

Final Ruling: No appearance at the May 12, 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 14, 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 Safe Credit Union ("Creditor") is granted, and Creditor's secured claim is determined to have a value of \$12,435.00.

The Motion filed by Rudy Valentino Raya and April Michelle Raya ("Debtor") to value the secured claim of Safe Credit Union ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 10. Debtor is the owner of a 2017 Jeep Patriot ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$12,435.00 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 December 31,

2017, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$19,093.08. Declaration, Dckt. 10. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of \$12,435.00, 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 Rudy Valentino Raya and April Michelle Raya ("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 Safe Credit Union ("Creditor") secured by an asset described as 2017 Jeep Patriot ("Vehicle") is determined to be a secured claim in the amount of \$12,435.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$12,435.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

Final Ruling: No appearance at the May 12, 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 February 26, 2020. By the court's calculation, 76 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 Safe Credit Union ("Creditor") is granted, and Creditor's secured claim is determined to have a value of \$10,500.00.

The Motion filed by David Garfield Evans ("Debtor") to value the secured claim of Safe Credit Union ("Creditor") is accompanied by the Declaration of Dave Callaway. Declaration, Dckt.105. Debtor is the owner of a 2013 Nissan Frontier ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$10,500.00 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).

Declaration of Dave Callaway

Mr. Callaway testifies under penalty of perjury that he is a sales manager at an auto dealership with extensive experience in evaluating vehicles and provides an appraisal of Debtor's Vehicle. Dckt. 105. Mr. Callaway values the Vehicle at \$10,500.00 after taking into account that the Vehicle has 130,982 miles and body damage that requires repairs totaling \$2,500.00. *Id.* at ¶¶ 2-3.

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on October 5, 2015, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$16,455.85. Proof of Claim, No. 3-1. 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 \$10,500.00, 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 David Garfield 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 the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Safe Credit Union ("Creditor") secured by an asset described as 2013 Nissan Frontier ("Vehicle") is determined to be a secured claim in the amount of \$10,500.00, 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 \$10,500.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

Final Ruling: No appearance at the May 12, 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, 38 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.

<p>The Motion to Confirm the Amended Plan is granted.</p>
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11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, David Garfield Evans ("Debtor") has provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response indicating non-opposition on April 28, 2020. Dckt. 116. 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, David Garfield 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 the Motion is granted, and Debtor's Amended Chapter 13 Plan filed on April 4, 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.

25. [19-25587](#)-E-13 **WILLIE NORMAN** **MOTION TO CONFIRM PLAN**
[MJD-3](#) **Matthew DeCaminada** **4-6-20 [55]**

Final Ruling: No appearance at the May 12, 2020 hearing is required.

The Motion to Confirm Chapter 13 Plan is dismissed without prejudice.

Willie Jean Norman (“Debtor”) having filed a “Withdrawal of Motion”, which the court construes to be an *Ex Parte* Motion to Dismiss the pending Motion on May 1, 2020, Dckt. 65; no prejudice to the responding party appearing by the dismissal of the Motion; Debtor having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; the Ex Parte Motion is granted, Debtor’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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 Chapter 13 Plan filed by Willie Jean Norman (“Debtor”) having been presented to the court, Debtor having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 65, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Confirm Chapter 13 Plan is dismissed without prejudice.

Final Ruling: No appearance at the May 12, 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, and the matter is removed from the calendar.**

Counsel for the debtor, Shannon Todd Butler (“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.