UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

June 6, 2023 at 2:00 p.m.

1.	**23-20962-E-13** **DPC-1**	**RUTHIE SHOULDERS** **Catherine King**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **5-17-23 [20]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice on May 17, 2023. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. Debtor does not reflect an accurate monthly mortgage payment to Rushmore Loan Management Services.

B. Debtor is delinquent in Plan payments.

DEBTOR'S ATTORNEY'S DECLARATION

Debtor's Attorney filed a declaration on May 22, 2023. Dckt. 25. Debtor's Attorney states they are now current on Plan payments, however, they will file an amended plan addressing Trustee's other issues.

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 an order substantially in the following form holding that:

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

2.	**20-22565-E-13** **MRL-4**	**TREVOR HASKETT** **Mikalah Liviakis**	**MOTION TO INCUR DEBT** **5-15-23 [42]**

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 May 15, 2023. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

The Motion to Incur Debt 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 Incur Debt is granted.

Trevor Marshall Haskett ("Debtor") seeks permission to purchase real property commonly known as 1109 Cedar Drive, Wheatland, California, with a total purchase price of $524,990.00 and monthly payments of $3,839.58 to NFM Consultants, Inc. over 30 years with a 5.375% fixed interest rate.

Debtor states they are current on Plan payments and they received court authorization to sell their real property located at 607 Stineman Ct, Wheatland, California, which will allow them to complete their Plan. *See* Order, Dckt. 35.

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." FED. R. BANKR. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to

adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. There being no opposition from any party in interest and the terms being reasonable, the Motion is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Incur Debt filed by Trevor Marshall Haskett ("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 Trevor Marshall Haskett is authorized to incur debt pursuant to the terms of the agreement, Exhibit E, Dckt. 50.

3.	**23-21090-E-13 DPC-1**	**AARON MCCONVILLE Pro Se**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 5-18-23 [14]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice on May 18, 2023. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. Debtor may have missclassified a Class 1 Claim.

B. Debtor's Schedules I and J may be inaccurate.

C. Debtor has not included tax refunds to pay into the Plan.

D. The Plan fails the liquidation analysis.

Debtor has filed an additional Schedule C, which is not indicated as a Supplemental or Amendment, Dckt. 18, which exempts "100% of fair market value, up to any applicable statutory limit." Debtor lists much of what was previously listed as nonexempt, except for cash and a checking account,

totaling $170.00. The court finds, with the low amount of nonexempt equity, Debtor satisfies the liquidation analysis. If Trustee objects to Debtor marking "100% of fair market value," rather than giving a dollar amount of the value, Trustee can raise these objections in a separate request for relief.

DISCUSSION

Trustee's objections are well-taken.

Misclassified Claim

The Plan classifies Santander Auto Car Loan as a Class 1 Claim. Plan, § 3.07. However, Debtor admitted at the first meeting of creditors that Santander's claim has 2-3 years left. Therefore, the clam should be listed as Class 2, as the claim will mature before the Plan is completed.

Insufficient Plan Payments / Infeasible Plan

Trustee alleges that the Plan may not be feasible. 11 U.S.C. § 1325(a)(6).

First, Debtor admitted at the First Meeting of Creditors that they have received a job promotion. It is unclear if Debtor's Schedule I properly reflects this promotion. Debtor has filed an Amended Schedule I, which reflects an increase in income from $6,250 to $6,300. Dckt. 19. Therefore, it appears Debtor has updated their Schedule I to reflect their promotion. At the hearing, XXXXXXXXXX

Second, Debtor's Schedule J lists a car payment, which, Debtor admitted at the First Meeting of Creditors, is the same creditor listed in Class 1 of the Plan. Debtor has since filed an Amended Schedule J, Dckt. 20, which no longer reflects the car payment. Therefore, Trustee's Objection, on these grounds, appears resolved.

Third, Debtor may be receiving significant tax refund. The Trustee was provided a 2021 tax return which shows a refund in the amount of $8,2922.00. Any refunds in excess of $2,000 should be used to fund the Plan. The Plan should be corrected to reflect this. At the hearing, XXXXXXXXXXÄ

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 an order substantially in the following form holding that:

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

4.	**23-21501-E-13**	**RICHARD CRUZ**	**MOTION TO EXTEND AUTOMATIC STAY**
	JMC-1	**Joseph Canning**	**5-12-23 [10]**

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, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on May 12, 2023. By the court's calculation, 25 days' notice was provided. 14 days' notice is required.

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

The Motion to Extend the Automatic Stay is granted.

Richard Wayne Cruz ("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. 22-21161) was dismissed on April 10, 2023, after Debtor was delinquent in Plan payments. *See* Order, Bankr. E.D. Cal. No. 22-21161, Dckt. 35, April 10, 2023. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because Debtor was confused as to how to make Plan payments. Debtor has now set up automatic payments and is confident that they can complete a Chapter 13 plan.

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

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

A. Why was the previous plan filed?

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

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

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

The Motion is granted, and the automatic stay is extended for all purposes and parties, unless terminated by operation of law or further order of this court.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Extend the Automatic Stay filed by Richard Wayne Cruz ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes and parties, unless terminated by operation of law or further order of this court.

5.	**23-20898-E-13 DPC-1**	**EVELYN BRAVO-GUTIERREZ AND JUAN BRAVO Mikalah Liviakis**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 5-10-23 [16]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney on May 10, 2023. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

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

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

A. **Tax Returns** - Not all tax returns have been filed.

B. **Overextended** - The Plan will take approximately 101 months to complete due to the Internal Revenue Service ("IRS") filing priority claims greater than what the Plan provides.

C. **Debtor's Name** - Debtor's name may be listed incorrectly in paperwork.

D. **Domestic Support Obligations** - Debtor may not have made all domestic support obligations prior to filing and that become payable after filing the petition. Additionally, they have not included the address of the claimholder.

DEBTOR'S RESPONSE

Debtor filed a Response on May 25, 2023. Dckt. 20. Debtor states:

1. **Tax returns** - Debtor has now filed their 2021 Federal and State Tax Returns, and provided a copy to the Trustee.

This appears to resolve Trustee's concerns regarding their tax return objection.

2. **Overextended** - Debtor agrees to pay an additional $100 per month to cover the additional IRS debt.

This would yield an additional $6,000. Debtor's Schedules I and J do not indicate an ability to increase Plan payments by $100, as Debtor's net income is $629.00 and their Plan payment is $627.00. Schedule J, Dckt. 1; Plan, Dckt. 3. Therefore, if Debtor intends to increase Plan payments, amended schedules need to be filed.

The IRS has filed a claim with $9,639.48 entitled to priority treatment. Proof of Claim 3-1. The Franchise Tax Board filed a claim with $581.00 entitled to priority treatment. Proof of Claim 4-1. Therefore, the total amount of priority claims are roughly $10,220.48. The current Plan only estimates priority claims of $2,200.00. Therefore, Debtor needs an additional $8,020.48 to provide for priority claims. Where Debtor only provides an additional $6,000, the Plan remains overextended, even as amended.

At the hearing, XXXXXXXXXX

3. **Debtor's Name** - Debtor's marriage certificate shows debtor Evelyn's legal name as Evelyn Gutierrez Bravo, which is one of the names listed in the Petition under "additional names used."

This appears to resolve Trustee's concerns regarding this objection.

4. **Domestic Support** - Debtor states they have an ongoing payroll deduction each period for domestic support. Additionally, they did not include the address of the claimholder because the claimholder is homeless. Debtor Evelyn's Declaration states she has personal knowledge that debtor Juan is current on Plan payments. Dckt. 21.

Debtor Evelyn's personal knowledge appears to resolve Trustee's concerns regarding this objection. However, given the Plan remains overextended, 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 an order substantially in the following form holding that:

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

6.	**23-20999-E-13 DPC-1**	**ROBERT/JENNIFER SHARP Candace Brooks**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 5-17-23 [16]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney on May 17, 2023. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

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

B. Debtor's Schedules A/B and C indicate an asset evidenced by an "Attachment," however, no attachment has been provided.

DISCUSSION

Trustee's objections are well-taken.

Failure to Afford Plan Payment / Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6).

Debtor's Unemployment

Trustee states Debtor Robert admitted at the First Meeting of Creditors that they are no longer unemployed, and are now employed by a "Sharp Landscapes, Inc.," which debtor Robert is either an officer, director, or managing executive of. Debtor Robert admitted they are now receiving wage income. Debtor's Schedule I only shows unemployment compensation and should be amended. Schedule I, Dckt. 1 at 31.

Family Contribution

Debtor states they receive a Family Contribution each month from two adult sons that reside with Debtor. Schedule I, Dckt. 1 at 31. However, Debtor does not provide a declaration or any other evidence from their sons as proof of this contribution and their commitment to continue to contribute for the duration of the Plan.

Schedules A/B and C Incomplete

Schedules A/B and C indicate assets used by Sharp Landscape with a value of $16,365.00. Dckt. 1 at 18, 22. To describe the assets, the schedules state "See Attachment A." *Id.* No attachment is provided. Without an accurate picture of Debtor's financial reality, the Plan cannot be confirmed.

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

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

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

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

7. 19-24611-E-13 DBJ-3 — RONALD/KIMBERLY GARNER — Doug Jacobs — MOTION TO MODIFY PLAN — 4-24-23 [88]

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 24, 2023. By the court's calculation, 43 days' notice was provided. Additionally, the Amended Notice of Motion was served on April 25, 2023. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is denied.

The debtor, Ronald William Garner and Kimberly Kay Garner ("Debtor") seeks confirmation of the Modified Plan to lower the dividend to unsecured claims due to a reduction in net income from $8,748.99 to $7,305.00 a month. Declaration, Dckt. 92. The Modified Plan provides $255,531.01 to be paid through May 1, 2023, followed by $5,000 per month for the remainder of the Plan. Additional Provisions, Dckt. 104. 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 May 22, 2023. Dckt. 101. Trustee opposes confirmation of the Plan on the basis that:

A. It appears the Plan fails the liquidation analysis.

B. Debtor improperly misclassified a claim as Class 1, when it should be Class 2.

C. Debtor's nonstandard provisions have not been served.

The court notes, Debtor served the nonstandard provisions on May 25, 2023, Dckt. 105, appearing to resolve Trustee's objection on these grounds.

DISCUSSION

Debtor Fails Liquidation Analysis

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor's plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). Debtor's nonexempt equity totals $129,547.80. Civil Minutes, Dckt. 86. Trustee estimates $114,538.00 of this would be available for distribution. Dckt. 101. The amount of unsecured claims filed total $184,740.85. Debtor is only proposing a 61.25% dividend, which totals $113,153.77. This is $1,384.23 less than unsecured claims would receive in a liquidation. Therefore, the Plan fails the liquidation analysis and cannot be confirmed.

Misclassified Claim

MidFirst Bank, a creditor holding a secured claim, has been classified as a Class 1 Claim in the Plan. Upon review of MidFirst's Proof of Claim, the maturity date of the claim is May 2024. Proof of Claim 16-1 at 11.

Pursuant to the Plan, a Class 1 claim are those that mature after the completion of the Plan. Proposed Modified Plan, Dckt. 90 § 3.07. Class 2 claims are those that have matured or will mature before the Plan is completed. Proposed Modified Plan, Dckt. 90 § 3.08.

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, Ronald William Garner and Kimberly Kay Garner ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Motion to Confirm the Modified Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

8.	**23-20920-E-13** **DPC-1**	**JENNIFER JOHNSON** **Matthew Gilbert**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **5-10-23 [14]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and parties requesting special notice on May 10, 2023. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. The Plan may not be in Debtor's best efforts.

B. Debtor's Chapter 13 documents appear inaccurate.

C. Debtor has failed to provide Trustee with payment advices.

DISCUSSION

Trustee's objections are well-taken.

Failure to Provide Disposable Income / 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 provided Trustee evidence and testimony that Debtor has a second job, however, Debtor has not listed the second job on their Schedule I or Form 122C-1, or provided Debtor with pay advices for the second job.

Debtor's Chapter 13 documents, therefore, are inaccurate and Debtor's Plan is not in Debtor's best efforts as it is not funded with all of Debtor's disposable income.

Additionally, 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).
That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

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 an order substantially in the following form holding that:

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

9. 11-21824-E-13 PGM-1 — DANNY/DEBRA HORSFALL — Peter Macaluso — AMENDED MOTION TO VALUE COLLATERAL OF COMERICA BANK — 4-27-23 [113]

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, and Office of the United States Trustee on April 27, 2023. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

The Amended 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 Amended Motion to Value Collateral and Secured Claim of Comerica Bank ("Creditor") is denied.

The Amended Motion to Value filed by Danny Richard Horsfall and Debra Sue Horsfall ("Debtor") to value the secured claim of Comerica Bank ("Creditor") is accompanied by Debtor's request for Judicial Notice of many filings on the bankruptcy case's docket.

The court notes, pursuant to Local Bankruptcy Rule 9014-1(d)(1), all motions shall be accompanied by notice, evidence, and a certificate of service. As evidence, Debtor requests the court take judicial notice of various filings in the bankruptcy case.

Federal Rule of Evidence 201 governs (and allows) judicial notice of certain adjudicative facts. That rule specifies the court may judicially notice a fact that is not subject to reasonable dispute because it (1) is generally known within the trial court's territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned. FED. R. EVID. 201(b).

One treatise describes the two categories of facts not subject to reasonable dispute as follows:

> The first category of adjudicative facts subject to judicial notice are facts which are "generally known within the territorial jurisdiction of the trial court." **This category requires that the fact to be noticed be of general notoriety in the geographical area of the court, but not of the United States as a whole**. It is also not necessary that the fact be universally known within the territorial jurisdiction, since such a requirement would seem to eliminate the category, no fact being so well known by every inhabitant within the jurisdiction as to be truly "universal."
>
> **This category is also limited to facts presently generally known within the jurisdiction**. Obviously, as time passes, the character of a jurisdiction in terms of its occupations, etc., will change. Accordingly, what a court might properly take judicial note of in the year 1800 might not be a proper subject of judicial notice in the year 2000.
>
> The combined result of these limitations is that many facts judicially noticed in this category may not seem obvious to an observer from another place and another time. Stated differently, facts judicially noted in this subsection of the Rule may often appear somewhat parochial. Since the standard is somewhat less objective than the standard in the second subcategory, this subcategory may be viewed as more subjective.
>
> Facts judicially noticed which fit within this subcategory are of breathtaking variety. The following are examples of that variety: bingo was largely a senior citizen pastime; major hijacking gangs had preyed on interstate and international commerce at Kennedy Airport; credit cards play vital role in modern American society; newspaper was New Jersey's only statewide newspaper, as well as its largest; incubation period of measles; British authorities in Hong Kong had not undertaken any persecution of persons because of race, religion, or political opinion; method for canning baked beans in New England; most establishments that sell beer also sell tobacco products; escape of ammonia gas from refrigeration coils ordinarily does not happen if coil is properly manufactured and installed; calendars have long been affixed to walls by means of a punched hole at the top of the calendar; the Ohio River is navigable.

> The following are some examples of similar facts which have been judicially noticed by state courts: passenger trains and freight trains are customarily separated; specific locations deemed valuable sources of gold; Texas cattle fever is a contagious disease; Connecticut River not navigable at specific location; proper season for the planting of cotton seed; existence of the Great Depression.
>
> **The second subcategory** of adjudicative facts are those facts "which are capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned."
>
> In this subcategory are facts which, while not generally known to persons within the jurisdiction, nonetheless **are of such nature that they can be definitively established by reference to the appropriate sources**. Within this category are facts capable of being determined precisely by astronomical and mathematical calculations, such as the times of sunrise and sunset, moonrise and moonset, the phases of the moon, what day of the week a given date was, and standard actuarial and life expectancy tables. Facts in this subcategory can also often be introduced as information in learned treatises pursuant to Rule 803(17) of the Federal Rules of Evidence.
>
> The following are examples of facts in this subcategory which have received judicial notice: August 6, 1976, was neither Sunday nor a Federal legal holiday; Father's Day, 1979, was June 17; closing stock prices on a specific date; life expectancy tables to calculate damages in persona injury case; present value table; time of sundown on specific date.

60 AM. JUR. PROOF OF FACTS 3d 175 (Originally published in 2001)(emphasis added).

The Federal Rules of Evidence permit courts to take judicial notice of **facts**, not documents. It is not a tool to be used for when counsel wants to shortcut the filing of documents as exhibits along with a declaration authenticating and explaining the documents.

What Debtor's counsel actually asks here is that the court review documents that have already been filed with the court. These documents are within the court's records.

In reviewing the documents referenced, the court notes that the Debtor directs the court to documents for the court to refer to as evidence in support of the Amended Motion. Debtor is the owner of the subject real property commonly known as 1119 E 19th Street, Marysville, California ("Property"). Debtor seeks to value the Property at a fair market value of $134,000.00 as of the petition filing date. Amended Motion, Dckt. 113; Schedule A, Dckt. 1; Declaration in Support of Original Motion, Dckt. 68. 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's Amended Motion seeks to value Creditor's claim at $0.00. Debtor argues the grounds for valuing the claim at $0.00 are:

1. Creditor received proper notice of the bankruptcy in 2011. Amended Motion, Dckt.. 113 at 2-3.

2. A claim exists whether or not a proof of claim is filed. The collateral was previously valued to determine 2nd and 3rd senior liens have a value of $0.00, "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." *Id.* at 4.

3. Having received notice of the bankruptcy filing, the two senior liens being valued before, the Debtor has the ability to reopen the case and correct an administrative issue. *Id.* at 5.

CREDITOR'S OPPOSITION

Creditor filed an opposition on May 4, 2023. Dckt. 118. Creditor opposes the Amended Motion on the grounds:

1. Pursuant to 11 U.S.C. § 1322(b)(2), Chapter 13 debtors may modify the rights of holders of secured claims through a Chapter 13 plan. Opposition, Dckt. 118 at 3. 11 U.S.C. § 506(a) is used to value a creditor's interest in light of the purpose of valuation and in conjunction with any hearing on such disposition or use or on a plan affecting the creditor's interest. *Id.*

2. No Proof of Claim was filed, therefore, the Creditor does not hold an "allowed claim" that can be valued. *Id.* at 5.

3. The Property is no longer Property of the bankruptcy estate, since the Property revested to Debtor when they received their discharge in August 2016. *Id.* 11 U.S.C. § 506(a) only permits valuation of a claim secured by property of the estate. *Id.*

4. The court's prior orders of the senior liens have no bearing on the issues in the Amended Motion. *Id.* at 6.

5. Liens survive a debtor's discharge, so the fact that Creditor received notice of the bankruptcy case is not relevant to the liens survival. *Id.*

6. The contested matter is not an administrative procedure as it affects the Creditor's substantive rights. *Id.* at 7.

DEBTOR'S REPLY

Debtor filed a reply on May 22, 2023. Dckt. 121. Debtor states:

1. Debtor may reopen a case to value a claim in order to accord relief. Debtor cites 11 U.S.C. §§ 350(b), 506(a). Debtor states for equity and

fairness, Debtor can reopen the case to value Creditor's collateral. Reply, Dckt. 121 at 2-3.

Debtor does not provide the court with any case law where prior courts have reopened cases to value a secured claim after the completion of a Plan.

2. Debtor has not materially changed the Creditor's expected treatment under the Plan:

   a. The Debtor only believed there was a UCC 1, and no Deed of Trust (*Id.* at 3);

   b. Creditor received notice that the treatment of its claim would be unsecured (*Id.* at 5); and

   c. The Plan did not provide any distributions to unsecured claims (*Id.*).

3. The Original Motion to Value the claim of Creditor was granted in the reopening of the case on August 29, 2022. This modified the original order which would render the claim as unsecured with $0.00 interest. *Id.*

The court notes this order was vacated. Order on Motion to Vacate filed by Comerica Bank, Dckt. 109 ("**IT IS ORDERED** that the Motion to Vacate is granted, and the order valuing Movant's secured claim in the amount of $0.00, and the balance of the claim as unsecured to be paid through the confirmed bankruptcy plan is, Order, Dckt. 79, is vacated.").

4. Upon reopening of a case, the estate is reopened, and Creditor can file a proof of claim.

The court notes, Debtor does not address the time limitations imposed by Federal Rules of Bankruptcy Procedure 3002(c) for filing a proof of claim. Upon review of Rule 3002(c), it is past the deadline for filing a proof of claim and well past the extension period provided for under (c)(6).

5. The reopening of a case causes property to yet be abandoned. Reply, Dckt. 121 at 2.

The court notes, upon receiving a discharge, the Property revested in Debtor. Plan, Dckt. 5 § 6.01. The court also notes, under 11 U.S.C. § 554(c), property scheduled under 11 U.S.C. § 521(a)(1) that was not administered is abandoned to the Debtor and administered for purposes of § 350. Debtor provides no law that upon reopening of the case, and after Property has revested to Debtor, that the Property vests back to being property of the estate.

6. The reopening of the case allows for a motion *Nun Pro Tunc* and/or Rule 60(b) as the petition date. Reply, Dckt. 121 at 7-8.

Debtor does not direct the court to an order or ruling of which these forms of relief would apply.

7. Debtor has not materially changed Creditor's expected treatment under the Plan, making this case distinguishable from *In re Wilkins*. The Creditor is not prejudiced or receiving less than provided to creditors holding an unsecured claim, therefore, there is no substantial right affected.

The court disagrees. Creditor held a secured claim and the Plan did not provide for Creditor's claim. Nothing in § 1322(a) compels a debtor to propose a plan that provides for a secured claim, and it is well established that a lien survives upon plan completion. Therefore, Creditor's expected treatment under the Plan would be that their interest remains unaffected and survives the Plan. To treat Creditor's claim as an unsecured claim would prejudice Creditor's expected treatment under the Plan, as it would now be treated as unsecured with a $0.00 distribution. The court finds there is a substantial right affected, this is not merely an administrative issue.

DISCUSSION

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).

11 U.S.C. § 506(a) is a tool that allows the court to determine the extent of a secured claim (rights and interest in collateral) and bifurcate the claim into a secured and unsecured portion. Section 506(a) is often referred to as a "lien strip," however, it does not remove a lien from the property. *Dewsnup v. Timm*, 502 U.S. 410, 417 (1992).

11 U.S.C. § 506(a) is not a standalone statute. Where a debtor is seeking rehabilitative relief under chapters 11, 12, and 13, a debtor may bifurcate a claim and modify the contractual obligations in the debtor-creditor relationship. In the rehabilitative bankruptcy chapters, § 506(a) is used to determine the value of the secured portion of a claim, modify the underlying contractual obligations between the creditor and debtor, and allow the debtor to pay the secured portion through the plan, the remainder to be treated as an unsecured claim.

In a chapter 13 case, 11 U.S.C. § 1322(b)(2) can be used to modify the rights of holders of secured claims and 11 U.S.C. § 506(a) can be used for a judicial valuation of the collateral to determine the status of the claim, thus bifurcating the secured and unsecured portion. *Zimmer v. PSB Lending Corp.* (*in Re Zimmer*), 313 F.3d 1220, 1224 (9th Cir. 2002) (citing *Nobelman v. Am. Sav. Bank*, 508 U.S. 324, 329 (1993)). A debtor would then fund the secured claim through the plan, and the unsecured portion would be treated as an unsecured claims.

Without the plan providing for the secured claim, upon completion of the plan, the valuation of a claim is null as the contractual obligations cannot be modified. The original terms of the contract, for the full claim amount, will attach to a creditor's surviving lien.

Debtor's Plan was confirmed on April 9, 2011. Dckt. 34. The Plan did not provide for Movant's secured claim. Additionally, the Plan was never modified to provide for Movant's claim. Payments under the Plan completed on January 23, 2013. Trustee's Final Report, Dckt. 50. Plans cannot be modified after the completion of payments. 11 U.S.C. § 1329(a). Therefore, Movant's secured claim was not, and cannot be, provided for in the Plan.

Debtor cites *Chagolla v. JP Morgan Chase Bank, N.A.* (*In re Chagolla*), 544 B.R. 676 (B.A.P. 9th Cir. 2016) as support to their position that they may now do a § 506(a), post-plan completion, valuation of Creditor's claim.

Chagolla looks to whether there is a time limitation in bringing a 11 U.S.C. § 506(a) motion. *Id.* at 680. The Ninth Circuit Bankruptcy Appellate Panel ("B.A.P.") determined there is no arbitrary time limitation for filing the avoidance. *Id.* However, the B.A.P. found, at a minimum, the following must be satisfied (emphasis added):

> [F]irst, **the confirmed plan must call for avoiding the wholly unsecured junior lien** and treat any claim as unsecured; second, the chapter 13 trustee **must treat the claim as unsecured pursuant to the plan**; and third, the creditor **must not be sufficiently prejudiced so that it would be inequitable to allow avoidance after entry of discharge** or the closing of the case.

Id. 681 (B.A.P. 9th Cir. 2016) [emphasis added].

Here, none of the above requirements were satisfied. Debtor's Plan did not provide for any treatment of Creditor's secured claim, thus, the Plan did not call for avoiding the "wholly unsecured junior lien." The Trustee did not treat the claim as unsecured pursuant to the Plan, as the Plan did not provide for the treatment of Creditor's secured claim as unsecured. Creditor would be prejudiced as a § 506 valuation would cause their lien to be valued at $0.00, instead of surviving the bankruptcy as unaffected.

Proof of Claim Requirement for § 506 Valuations

Under 11 U.S.C. § 506, for the court to determine a creditor's secured claim, 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). Additionally, as § 506(a)(1) states, the value of a secured claim can be determined only to an allowed claim. A claim is deemed

allowed only if a proof of claim is filed. 11 U.S.C. § 501, 502; Federal Rules of Bankruptcy Procedure 3002(a).

If a claim is disallowed under section 502(b)(5) or 502(e), or for failure to file a proof of claim, the lien continues unaffected. 4 Collier on Bankruptcy P 506.06 (16th 2023). "[I]n order for the lien to be avoided, either the holder or another person entitled to do so must file a proof of claim with respect to the creditor's claim or otherwise seek disallowance of the claim or avoidance of the lien. The creditor would, of course, be entitled to 'notice and a hearing' with respect to an objection to the filed proof of claim." 4 Collier on Bankruptcy P 506.06 (16th 2023)

The court has reviewed the Claims Registry for this bankruptcy case. No Proof of Claim has been filed by Creditor or Debtor. Additionally, the deadline to file proof of claims was over twelve years ago. Notice of Chapter 13 Bankruptcy Case, Meeting of Creditors, & Deadlines, Dckt. 9. Thus, the court cannot value the claim as it is not an allowed claim and the deadline to file claims has passed.

RULING

As the court has mentioned in its previous ruling, the court recognizes that in substance, the not having identified the claim as being secured and not providing for it as a Class 2 Secured Claim in the Chapter 13 Plan (§ 506(a) valuation and bifurcation of the secured claim, modifying the original contract for the secured obligation and paying the valued secured claim, which may be $0.00, in full, and upon plan completion that modification becoming final and there being no obligation left to be secured) may result in an unanticipated secured obligation surviving Debtors performance of the Bankruptcy Plan. This Bankruptcy Case was filed January 25, 2011, in the crashing real estate market of the Great Recession, with lenders and their loans falling left and right. As Debtor notes, they presented evidence that in the depths of the Great Recession that the Property, their family residence, had a value of $134,000. Dec.; Dckt. 16. The senior deed of trust on the Property secured a claim in the amount of ($168,505), which exhausted all of the value in the property. Proof of Claim 31-1.

Unfortunately, the Bankruptcy Code and Rules provided by the Supreme Court offers no legal doctrine that allows the court to value Creditor's claim over seven years after the Plan has been completed and no Proof of Claim has been filed. At this time in the case, after the deadline for filing proofs of claims has passed, the Plan has been completed, a discharge has been granted, and the case was previously closed, a 11 U.S.C. § 506(a) valuation is improper. The Amended motion is denied.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Amended Motion to Value Collateral and Secured Claim filed by Danny Richard Horsfall and Debra Sue Horsfall ("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 Amended Motion is denied

10. 21-20225-E-13 DPC-2 | **DONALD JOHNSON Michael Hays** | **MOTION TO QUASH LEVY 5-23-23 [227]**

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, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on May 23, 2023. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion to Quash Levy 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 Quash Levy is xxxxxxxxxx.

The Chapter 13 Trustee, David P. Cusick ("Trustee"), requests an order quashing the levy from the attorney for Creative Judgment Solutions ("Creditor"), a creditor holding secured claim in the case. Trustee requests the Motion be granted on the following grounds:

1. The levy requires a payment prior to confirmation of a Plan without order of the bankruptcy court. While an order exists authorizing payment prior to confirmation to the creditor, the order has different terms.

Upon review of the docket, on May 18, 2023 the court authorized the Trustee to pay Creditor their secured claim of $62,012.79 in full from the proceeds of the sale of the real property located at 35501 Brinville Road, Acton, California ("Property"). Order, Dckt. 226.

2. The bankruptcy debtor, Donald Blair Johnson ("Bankruptcy Debtor"), and estate are protected by the automatic stay. The Trustee is prepared to administer a payment to Creditor pursuant to the court's May 18, 2023

order, however, the address is different in the claims rather than the their attorney's address. If Creditor's address has changed, a form is available online.

The court notes, Creditor's Proof of Claim indicates an address of 9333 Baseline Road, Suite 110, Rancho Cucamonga, California. The Notice of Levy, however, reflect their attorney Calvin F. Love's address, located at 800 South Barranca Ave., Suite 100, Covina California. Notice of Levy, Exhibit A, Dckt. 229. At the hearing, XXXXXXXXXX

3. The levy names Trustee individually and not in their capacity as Trustee, however, the Trustee believes the intended is intended to this case.

The Notice of Levy is dated May 22, 2023 and states the Garnishee is "David Paul Cusick." Memorandum of Garnishee, Exhibit A, Dckt. 229

4. The levy should be quashed for failure to name the proper party in their capacity.

DISCUSSION

On March 31, 2023, Creditor filed an amended Proof of Claim in the amount of $62,012.79. Amended Proof of Claim 1-2. Attached to Original Proof of Claim 1-1 filed by Creditor are copies of the underlying state court judgment and lien documents for that Claim. These are summarized as follows:

A. State Court Action 113CV255077, California Superior Court for the County of Los Angeles.

B. Judgment was granted for Plaintiff Gina White and against Donald Blair Johnson, the Debtor on March 1, 2016.

C. The State Court Judgment against Debtor was assigned to Creditor on October 1, 2020.

D. An Abstract of Judgment was recorded in Butte County on October 27, 2020, and in Los Angeles County on January 19, 2021.

Proof of Claim 1-1, p. 6 - 10.

Notice of Levy Documents

The court notes, Trustee's Exhibit filed in support of this Motion indicates Creditor's Notice of Levy and Memorandum of Garnishee ("Notice of Levy") is against a judgment debtor of "Caraly Johnson." Exhibit A, Dckt. 229. Caraly Johnson is not the Bankruptcy Debtor. There is, however, a Caraly Johnson holding an unsecured claim in the amount of $228,125.72 in this case. Proof of Claim 2-1.

Assuming the judgment debtor in the Notice of Levy is the same "Caraly Johnson" holding an unsecured claim in the case, it appears Bankruptcy Debtor and judgment debtor Caraly were legally married, and as of August 30, 2022, their marriage dissolution was pending. Stipulation, Dckt. 117.

According to Trustee's authenticated Exhibit, the Notice of Levy is for the execution of a money judgment from a case entitled *Gina White v. Caraly Johnson* in Los Angeles County Superior Court, Case No. 19AVCV00519 ("Caraly State Case"). Exhibit A, Dckt. 229. From review of the Writ of Execution attached to the Notice of Levy, Creditor is the assignee of record. *Id.* at 10. This is a difference case number than for the judgment entered against the Debtor.

The writ of execution for the Notice of Levy states that the judgment against Carly Johnson was entered on July 21, 2020 (several months earlier than the judgment against the Debtor) and the total amount of the judgment against Carly Johnson as of May 4, 2023 is $61,949.38, plus interest of $16.96 per day thereafter. Exhibit A, p. 10.

This $61,949.38 stated on the Writ of Execution owed to plaintiff Gina White, with this second judgment having been assigned to Creditor is almost exactly the same amount as the $62,012.79 stated by Creditor in Amended Proof of Claim 1-2.

It appears that this may well be the same judgment obligation for which separate judgments were issued. It may be that the persons Creditor has computing the added costs and interest for the Proof of Claim and now the Writ of Execution have made small computational errors.

The court notes that Original Proof of Claim 1-1 and Amended Proof of Claim filed by Creditor were signed by Phil Smith, as Vice President of Creditor. The Notice of Levy and Writ of Execution documents are prepared by Calvin F. Love, Esq., as the attorney for Creditor.

At the hearing, XXXXXXXXXX

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Quash Levy 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 Motion is xxxxxxxx

11. 22-23225-E-13 DWL-1 | **FRANKIE HAYDUK** **Patricia Wilson** | **MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT 5-23-23 [49]**

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

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 Not 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 May 23, 2023. By the court's calculation, 14 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice).

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

The Motion for Approval of Compromise is denied without prejudice.

Frankie Blu Hayduk, Chapter 13 Debtor, ("Movant") requests that the court approve a compromise and settle claims and disputes associated with damages Movant sustained in the Mill Fire in Weed, California.

Movant states the firm of Reiner, Slaughter & Frankel has been handling Movant's claim, and that she will receive a gross settlement of $35,000, which will be allocated as follows:

A. Gross Settlement: $35,000.00

B. Attorney's Fees (25% contingency fee): ($8,750.00)

C. Net Settlement to Movant: $26,250.00

Although Movant states the above are the terms of the settlement agreement, Movant has failed to provide the court with necessary information and evidence regarding the compromise.

First, it is unclear to the court who Reiner, Slaughter & Frankel are and whether they represent Movant in the personal injury matter, or whether they represent the settlor. Second, it is unclear who the settlor is, and who is settling with Movant. Third, Movant has not provided any exhibit of the settlement agreement, or declaration from the settlor, as evidence of the settlement.

Third, Debtor has not obtained authorization to employ the Reiner, Slaughter & Frankel. Such authorization is necessary for those lawyers to be paid from the bankruptcy estate or the Plan estate.

The court has not been provided adequate information and evidence to approve the compromise.

DISCUSSION

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Constr.)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Comm. for Indep. S'holders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424–25 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

3. The complexity of the litigation involved and the expense, inconvenience, and delay necessarily attending it; and

4. The paramount interest of the creditors and a proper deference to their reasonable views.

In re A & C Props., 784 F.2d 1377, 1381 (9th Cir. 1986); *see also In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

Movant does not argue whether the four factors have been met. The court has not been provided sufficient grounds or evidence to approve the Motion.

Notice of Dismissal of Motion

On May 30, 2023, Debtor filed a pleading titled "Ex Parte Motion to Withdraw Second Motion to Approve [Settlement]. Dckts. 62. While the Federal Rules of Bankruptcy Procedure do not provide for the "withdrawal" of a Motion, Federal Rule of Bankruptcy Procedure 9014(c) makes Federal Rule of Civil Procedure 41, which is incorporated into Federal Rule of Bankruptcy Procedure 7041, applicable to contested matters. Federal Rule of Civil Procedure 41(a)(1)(A)(I) provides that the moving party may dismiss a motion without prejudice if no responsive pleading has been filed thereto.

The *Ex Parte* Motion to Dismiss seeks to "dismiss" the second filing of the Motion and supporting documents, which were filed using the same Docket Control Number.

Because the documents are the same that were filed previously, which occurred due to human error, they would be amended pleadings filed for the original Motion, not a new motion. Rather than entering an order "dismissing" the "second motion," which could cause confusion and this Motion appearing to have been dismissed.

The court construes the "Motion to Dismiss Second Motion" to be an *errata* statement that the second filing of the documents are duplicates and do not present any new or additional materials to the court.

At the hearing, **xxxxxxx**

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Compromise filed by Frankie Blu Hayduk, the Chapter 13 Debtor, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Approval of Compromise is denied without prejudice.

12. 23-20425-E-13 DPC-1 | **DANIEL/SHANNON AHUMADA** Seth Hanson | **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** 3-22-23 [18]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and parties requesting special notice, on March 22, 2023. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is xxxxxxxxxx

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

A. the debtors, Daniel Matthew Ahumada and Shannon Audrey Ahumada ("Debtor"), provided a Plan that surpasses the limit of 60 months.

B. Debtor's Schedule J appears to be incomplete.

C. Plan does not represent Debtor's best efforts.

DISCUSSION

Trustee's objections are well-taken.

Plan Term is More Than 60 months

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to Trustee, the Plan will complete in 164 months due to a recently filed priority claim by Eliot Reiner, in the amount of $250,000.00, on March 13, 2023. Proof of Claim 7-1. It appears Debtor had not anticipated this proof of claim as the voluntary petition was filed on February 10, 2023. Dckt. 3. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

Incomplete Schedule J

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. During the Meeting of Creditors, Debtor indicated that there was a $270.00 Self Storage fee that is not accounted for in the proposed plan. Dckt. 20. The Plan does not comply with 11 U.S.C. § 1325(a)(1).

Failure to Provide Disposable Income

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 states the existence of 401K loans. Dckt. 1, page 40. Debtor has stated that there will be an increase in disposable income after the 401K Loan #1 ends in May 2024 and another increase after the 401K Loan #2 ends in March 2026. *Id.* However, Debtor's proposed Plan does not account for these increases in income. This indicates a lack of best efforts.

At the hearing, Debtor's counsel reported that a settlement has been worked out and the $250,000 claim is being withdrawn. Trustee's counsel concurred in the request for a continuance.

Withdrawal of Proof of Claim

On May 19, 2023, Aurora Tetrick-Marquez by & through her Guardian ad Litem, Priscilla Tetrick, filed a Withdrawal of Proof of Claim 7-1. The withdrawal of the Proof of Claim appears to resolve the overextension of the Plan, however, it is unclear if it resolves the other two objections.

June 6, 2023 Hearing

At the hearing, XXXXXXXXXX

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

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

13. 21-23439-E-13 SLH-3 — JOLIE/MICHAEL BARKALOW — Seth Hanson — MOTION TO EMPLOY FATHOM REALTY GROUP AS BROKER(S) — 5-12-23 [87]

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, and Office of the United States Trustee on May 12, 2023. By the court's calculation, 25 days' notice was provided. 14 days' notice is required.

The Motion to Employ 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 Employ is granted.

Sean Percival, successor representative for the late debtors and Chapter 13 Plan Administrator ("Administrator") seeks to employ Daniel Parisi of Fathom Realty Group ("Broker")

pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Administrator seeks the employment of Broker to assist the Debtor in "valuing, marketing, and possibly listing for sale" the real property commonly known as 4421 Arbroath Way, Antelope, California ("Property").

Administrator argues that Broker's appointment and retention is necessary to assist Administrator in selling the Property to accelerate the conclusion of the Plan. Broker shall review the history of the Property, inspect the interior and exterior of the Property, and act as Administrator's agent in connection with the marketing and sale of the Property. In return, Broker will receive a 5.00% commission of the gross sales price of the Property.

Broker testifies that he has substantial experience in the valuing, marketing, and sale of real estate in the area where the Property is located. Broker testifies he and the firm do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

Pursuant to § 327(a), a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals, including attorneys, to represent or assist the trustee in carrying out the trustee's duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must not hold or represent an interest adverse to the estate and be a disinterested person.

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

Taking into account all of the relevant factors in connection with the employment and compensation of Broker, considering the declaration demonstrating that Broker does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Daniel Parisi of Fathom Realty Group as Broker for the Chapter 13 Estate on the terms and conditions set forth in the Listing Agreement filed as Exhibit B, Dckt. 89. Approval of the commission is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Employ filed by Sean Percival ("Administrator") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Employ is granted, and Administrator is authorized to employ Daniel Parisi of Fathom Realty Group as

Broker for Administrator on the terms and conditions as set forth in the Listing Agreement filed as Exhibit B, Dckt. 89.

IT IS FURTHER ORDERED that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.

IT IS FURTHER ORDERED that no hourly rate or other term referred to in the application papers is approved unless unambiguously so stated in this order or in a subsequent order of this court.

IT IS FURTHER ORDERED that except as otherwise ordered by the Court, all funds received by counsel in connection with this matter, regardless of whether they are denominated a retainer or are said to be nonrefundable, are deemed to be an advance payment of fees and to be property of the estate.

14. 23-21447-E-13 MOH-1 | **MARTHA ESPINOZA** / **Michael Hays** | **MOTION TO VALUE COLLATERAL OF ONEMAIN FINANCIAL GROUP, LLC** **5-23-23 [19]**

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the 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 May 23, 2023. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of OneMain Financial Group, LLC ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $10,887.00.

The Motion filed by Martha Espinoza ("Debtor") to value the secured claim of OneMain Financial Group, LLC ("Creditor") is accompanied by the declaration of Clancy Callahan, the office administrator for Debtor's Attorney. Declaration, Dckt. 21. Debtor is the owner of a 2012 Nissan Frontier ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $10,887.00 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). Additionally, Debtor provides a properly authenticated Kelley Blue Book valuation indicating the Fair Market Purchase Price of $10,887.00. Exhibit 1, Dckt. 22.

DISCUSSION

The lien on the Vehicle's title secures a non-purchase-money loan incurred on May 26, 2021, to secure a debt owed to Creditor with a balance of approximately $18,252.39. Proof of Claim, No. 2-1. 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 $10,887.00, 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 an order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Value Collateral and Secured Claim filed by Martha Espinoza ("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 OneMain Financial Group, LLC ("Creditor") secured by an asset described as 2012 Nissan Frontier ("Vehicle") is determined to be a secured claim in the amount of $10,887.00, 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 $10,887.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

15. 23-20948-E-13 DPC-1 | **NADIEN MENKE** **Mo Mokkarram** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **5-16-23 [13]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and parties requesting special notice on May 16, 2023. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. Debtor is delinquent in Plan payments.

DISCUSSION

Trustee's objections are well-taken.

Delinquency

Debtor is $850.00 delinquent in plan payments, which represents one month of the $850.00 plan payment. Before the hearing, another plan payment will be due. According to Trustee, the Plan in § 2.01 calls for payments to be received by Trustee not later than the twenty-fifth day of each month

beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

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 an order substantially in the following form holding that:

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

16. 22-22350-E-13 KMM-1 | **ROSE LIZOLA** Julius Cherry | **MOTION TO APPROVE LOAN MODIFICATION** 4-28-23 [19]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor , Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on April 28, 2023. By the court's calculation, 39 days' notice was provided. 28 days' notice is required.

The Motion to Approve Loan Modification has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered.

The Motion to Approve Loan Modification is xxxxxxxxxx.

The Motion to Approve Loan Modification filed by Allied First Bank, SB dba Servbank as attorney-in-fact for Mountain West Financial Inc ("Creditor") seeks court approval for debtor Rose Lizola ("Debtor") to incur post-petition credit. Creditor, whose claim the Plan provides for in Class 1, has agreed to a loan modification that will bring Debtor current on past-due amounts and adjust the maturity date, the amount of interest-bearing principal, and the interest rate of their obligations.

Debtor's Joinder

On May 10, 2023, Debtor filed a "Joinder" indicating that Debtor joins Creditor's Motion. It is unclear what Debtor is "joining." Dckt. 24. The court believes this may be a statement indicating Debtor's agreement to the loan modification. Debtor has not provided a declaration as evidence of their support of the Motion.

Trustee's Response

Trustee filed a response on May 22, 2023. Dckt. 26. Trustee that it is their understanding that the loan modification defers approximately $38,000 and explicitly clarifies that payment is not forgiven. Trustee believes the deferment is in the best interest of the estate.

DISCUSSION

Review of Minimum Pleading Requirements for a Motion

The Supreme Court requires that the motion itself state with particularity the grounds upon which the relief is requested. FED. R. BANKR. P. 9013. The Rule does not allow the motion to merely be a direction to the court to "read every document in the file and glean from that what the grounds should be for the motion." That "state with particularity" requirement is not unique to the Bankruptcy Rules and is also found in Federal Rule of Civil Procedure 7(b).

Consistent with this court's repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, applied the general pleading requirements enunciated by the United States Supreme Court to the pleading with particularity requirement of Bankruptcy Rule 9013. *See In re Weatherford*, 434 B.R. 644, 646 (N.D. Ala. 2010) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 545 (2007)). The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal* to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court. *See* 556 U.S. 662 (2009).

Federal Rule of Bankruptcy Procedure 9013 incorporates the "state with particularity" requirement of Federal Rule of Civil Procedure 7(b), which is also incorporated into adversary proceedings by Federal Rule of Bankruptcy Procedure 7007. Interestingly, in adopting the Federal Rules of Civil Procedure and of Bankruptcy Procedure, the Supreme Court endorsed a stricter, state-with-particularity-the-grounds-upon-which-the-relief-is-based standard for motions rather than the "short and plain statement" standard for a complaint.

Law and motion practice in bankruptcy court demonstrates why such particularity is required in motions. Many of the substantive legal proceedings are conducted in the bankruptcy court through the law and motion process. These include sales of real and personal property, valuation of a creditor's secured claim, determination of a debtor's exemptions, confirmation of a plan, objection to a claim (which is a contested matter similar to a motion), abandonment of property from the estate, relief from the automatic stay, motions to avoid liens, objections to plans in Chapter 13 cases (akin to a motion), use of cash collateral, and secured and unsecured borrowing.

The court in *Weatherford* considered the impact to other parties in a bankruptcy case and to the court, holding,

> The Court cannot adequately prepare for the docket when a motion simply states conclusions with no supporting factual allegations. The respondents to such motions cannot adequately prepare for the hearing when there are no factual allegations supporting the relief sought. Bankruptcy is a national practice and creditors sometimes do not have the time or economic incentive to be represented at each and every docket to defend against entirely deficient pleadings. Likewise, debtors should not have to defend against facially baseless or conclusory claims.

In re Weatherford, 434 B.R. at 649–50; *see also In re White*, 409 B.R. 491, 494 (Bankr. N.D. Ind. 2009) (holding that a proper motion must contain factual allegations concerning requirements of the relief sought, not conclusory allegations or mechanical recitations of the elements).

The courts of appeals agree. The Tenth Circuit Court of Appeals rejected an objection filed by a party to the form of a proposed order as being a motion. *St. Paul Fire & Marine Ins. Co. v. Continental Casualty Co.*, 684 F.2d 691, 693 (10th Cir. 1982). The Seventh Circuit Court of Appeals refused to allow a party to use a memorandum to fulfill the pleading with particularity requirement in a motion, stating:

> Rule 7(b)(1) of the Federal Rules of Civil Procedure provides that all applications to the court for orders shall be by motion, which unless made during a hearing or trial, "shall be made in writing, [and] *shall state with particularity the grounds therefor*, and shall set forth the relief or order sought." The standard for "particularity" has been determined to mean "reasonable specification."

Martinez v. Trainor, 556 F.2d 818, 819–20 (7th Cir. 1977) (citing 2-A JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶ 7.05 (3d ed. 1975)).

Not stating with particularity the grounds in a motion can be used as a tool to abuse other parties to a proceeding, hiding from those parties grounds upon which a motion is based in densely drafted points and authorities—buried between extensive citations, quotations, legal arguments, and factual arguments. Noncompliance with Federal Rule of Bankruptcy Procedure 9013 may be a further abusive practice in an attempt to circumvent Bankruptcy Rule 9011 by floating baseless contentions to mislead other parties and the court. By hiding possible grounds in citations, quotations, legal arguments, and factual arguments, a movant bent on mischief could contend that what the court and other parties took to be claims or factual contentions in the points and authorities were "mere academic postulations" not intended to be representations to the court concerning any actual claims and contentions in the specific motion or an assertion that evidentiary support exists for such "postulations."

Grounds Stated in Motion

Creditor has not provided any legal grounds to support their Motion, merely bareboned factual grounds indicating some modification of terms in Creditor and Debtor's loan agreement. The insufficient statements made by Creditor are:

> Debtor and [Creditor] have agreed to modify the Debtor's loan to bring the Debtor current as of the modification effective date and adjust the maturity date, the amount of interest-bearing principal, and the interest rate of their obligation to [Creditor] and now seek approval of the Court. Once the loan modification agreement is approved, [Creditor] shall withdraw or amend its proof of claim as necessary.

Creditor provides a table specifying specific terms of the payment deferral, indicating a total past-due amount of roughly $35,000 to be deferred. Additionally, the Motion states, "[i]nterest will not be charged on total past-due amounts deferred. The payment deferral will not change any othter [*sic*] terms of the loan agreement or related deed of trust."

Although the Motion indicates fourteen past due principal and interest payments to be deferred, neither the Motion, Declaration in Support of Motion (Dckt. 21), nor Exhibits in Support of Motion (Dckt. 22) indicates what the maturity date is being deferred to, the amount of interest-bearing principal, and the modified interest rate. These are key terms the court must have to determine whether the loan modification is fair and in the best interest of the estate.

The eight page "Payment Deferral Agreement" is provided as Exhibit C. Dckt. 22. In this Agreement, the "Terms of the Payment Deferral" are stated as:

> **Terms of the Payment Deferral**
>
> As of February 1st, 2023, we will
>
> • adjust the due date of your next scheduled monthly payment to bring your mortgage current,
>
> • defer the scheduled repayment of the total past-due amounts to the maturity date of the mortgage or earlier upon the sale or transfer of the property, refinance of the mortgage loan , or payoff of the interest-bearing unpaid principal balance, and
>
> • waive any late charges .

Exhibit C; Dckt. 22 at 23. Next in the Agreement is a table showing the payments to be deferred and amounts. *Id*. at 24.

From the above, it appears that a simple summary of the Modification is that Creditor will defer the payment of the arrearage until either the sale or transfer of the Property, a refinance of the debt, or the outstanding, non-deferred principal balance is paid as provided in the Note and the Debtor has not otherwise defaulted on obligations arising on the Note and Deed of Trust.

Thus, as the Trustee asserts, this Modification is in the interests of the Debtor, Bankruptcy Estate, Plan Estate, and Creditors.

At the hearing, XXXXXXXXXX

Additionally, Creditor has failed to provide any legal grounds in support of their Motion. Local Bankruptcy Rule 9014-1(d)(3)(A) provides all requests for relief shall state with particularity the factual and legal grounds. Legal grounds means citation to a statute, rule, case, or common law doctrine that forms the basis of the moving party's request. Here, Creditor provides no such legal citation.

Creditor is reminded that "[f]ailure of counsel or of a party to comply with these [Local Bankruptcy] Rules . . . may be grounds for imposition of any and all sanctions authorized by statute or rule within the inherent power of the Court, including without limitation, **dismissal of any action**, entry of default, finding of contempt, imposition of monetary sanctions or attorneys' fees and costs, and other lesser sanctions." LOCAL BANKR. R. 1001-1(g) (emphasis added).

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Loan Modification filed by Allied First Bank, SB dba Servbank as attorney-in-fact for Mountain West Financial Inc ("Creditor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is xxxxxxxxxxxx

17. 22-22352-E-13 MET-1 — MAUREEN MCGUIRE — Mary Ellen Terranella — MOTION TO SELL — 5-2-23 [35]

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, and Office of the United States Trustee on May 2, 2023. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion to Sell Property is xxxxxxx .

The Bankruptcy Code permits Maureen Janet McGuire, the Chapter 13 Debtor, ("Movant") to sell property of the estate or 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 2247 Buena Vista Avenue, Alameda, California ("Property").

Trustee's Response

Trustee filed a Response on May 22, 2023. Dckt. 40. Trustee states:

1. Debtor has not provided an estimated closing statement; and

2. Debtor's Declaration is blurry and hard to read.

DISCUSSION

The proposed purchaser of the Property is Victor Joseph Promessi and Norah Stafford Duffy ("Buyer"), and the terms of the sale are:

A. Purchase Price: $435,000.00

B. Down Payment: $100,000.00

C. Carry-back financing: $335,000.00

Debtor's Motion indicates they are in not any way related to the proposed buyer. Debtor provides a Declaration, however, page 2 of the Declaration is unreadable. Dckt. 37 at 2.

The Purchase Agreement indicates neither the seller nor buyer are using brokerage firms. This is cause for concern for the court. Brokerages are common for the sale of real property, and use tools and resources to understand the market, value the property, and get the best return for the seller or buyer.

More significantly, Debtor is performing this Plan as the fiduciary Plan Administrator. The "normal" sale of real property is through the use of a broker, having the property marketed, and then the best offer being presented in open court.

In the Motion, the court is advised that the Debtor "found a buyer," that the proposed sales price "is reasonable," the buyers are not related to the Debtor (but does not state if they are related to the co-owner, Debtor's sister, or anyone else affiliated with Debtor), and that this sale is in the "best interests" of creditors. Motion, p. 2:3-14; Dckt. 35. Debtor provides no evidence that she has any expert qualifications to testify as to the value of the property (other than an owner's statement of value, which is the most ephemeral evidence of value).

As noted above, it is of grave concern to the court is that Movant, as the fiduciary , has not provided a Listing Agreement as evidence that the Property was listed.

Notwithstanding the above, the Motion further asserts that the proceeds of the sale are sufficient to pay all administrative expenses, secured claims, and unsecured claims in full. If that is so, then any lost value due to Debtor not marketing the Property in a commercially reasonable manner will be the Debtor's Loss, not the Creditors.

On May 31, 2023, Debtor filed a Second Declaration in Support of the Motion. Dckt. 45. Debtor testifies that she projects receiving $100,000.00 from the sale. She also authenticates the Purchase Agreement and Escrow Statement filed as exhibits with the Second Declaration. Exhibit B is

the Estimated Seller's Statement. Dckt. 43. The financial information from the Estimated Seller's Statement is summarized as follows:

A. Gross Sales Price.....$435,000
B. Prorated Taxes.....$ 27.87

C. Title and Escrow Fees.....($ 295.00)
D. Tax Lien.....($ 22,000.00)
E. Payoff PACE Loan.....($ 44,000.00)
F. Property Taxes.....($ 7,08714)
G. Seller Carry Back Financing.....($335,000.00)
H. Trustee Fees.....($ 1,500.00) Trustee not identified.

After subtracting the secured debt to be paid and the carry back financial, there is the grand total of $25,135.73 in cash proceeds remaining. It is unclear how Debtor brings $100,000 cash into her bankruptcy case.

A tax claim of $6,433.78 has been filed in Debtor's case by Alameda County. POC 6-1. Looking at Proof of Claim 6-1, it does not assert any obligation against the Debtor personally, but only as the Trustee of her Mother's Trust. It is not clear how this is asserted as a Proof of Claim that the Debtor personally owes and is to be paid out of the Debtor's assets.

All of the other claims filed, which are all general unsecured claims, total ($17,353.58). It is not clear what portion of the $25,135.73 of the cash proceeds remaining at close of escrow will be paid into the Chapter 13 Plan.

At the hearing, XXXXXXXXXX

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

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 Rule as adopted by the United States Supreme Court because "time is of the essence" for the sale of the Property and to reduce costs in the event of delays.

Movant has 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 is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Sell Property filed by Maureen Janet McGuire, the Chapter 13 Debtor, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> ~~**IT IS ORDERED** that Maureen Janet McGuire, the Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Victor Joseph Promessi and Norah Stafford Duffy or nominee ("Buyer"), the Property commonly known as 2247 Buena Vista Avenue, Alameda, California, California ("Property"), on the following terms:~~
>
> ~~A. The Property shall be sold to Buyer for $435,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 38, and as further provided in this Order.~~
>
> ~~B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.~~
>
> ~~C. Chapter 13 Debtor is authorized to execute any and all documents reasonably necessary to effectuate the sale.~~
>
> ~~**IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 6004(h) is waived for cause.~~

18. 18-26184-E-13 OLEG/SOMMER ZHURKO CONTINUED OBJECTION TO CLAIM OF ALLY BANK, CLAIM NUMBER 1

DPC-3 Mark Shmorgon 2-14-23 [72]

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on February 14, 2023. By the court's calculation, 56 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

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

The Objection to Proof of Claim Number 1-2 of Ally Bank is xxxxxxxx

David P. Cusick, the Chapter 13 Trustee, ("Objector") requests that the court disallow the claim of Ally Bank ("Creditor"), Proof of Claim No. 1-2 ("Claim"), Official Registry of Claims in this case. Creditor's original claim, Claim 1-1, was secured in the amount of $22,878.67. However, the Claim was amended on December 6, 2022 to assert an unsecured in the amount of $14,298.34. Proof of Claim 1-2.

Objector objects to the amended claim and believes the original claim amount was correct. Objector believes Creditor has an unsecured claim in the amount of $5,878.67, which will receive a disbursement under the Plan. Objector seeks the court enter an order disallowing the amended claim and reinstating the original claim.

DISCUSSION

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

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

At the hearing the Trustee requested the matter be continued as the Parties are working on resolving this issue.

Debtor's Nonopposition

The Trustee filed a document titled, "DEBTOR'S NON-OPPOSITION TO TRUSTEE'S OBJECTION TO CLAIM 1 AMENDMENT." Dckt. 80. This appears to be a Status Report from the Trustee with Debtor's Attorney's signature, along with Trustee's, to indicate that Debtor and their attorney are aware of the pending Objection.

Trustee again requests the amended claim be reinstated to the original claim. Trustee does not indicate whether they have been in communication with Creditor.

June 6, 2023 Hearing

At the hearing, XXXXXXXXXX

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Ally Bank ("Creditor"), filed in this case by David P. Cusick, the Chapter 13 Trustee, ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Proof of Claim Number 1-2 of Ally Bank is XXXXXXXXX

19. 23-20188-E-13 DPC-1 | **PORTIA STEWART** **Peter Macaluso** | **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK** **3-14-23 [21]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, on March 14, 2023. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained, and the Plan is not confirmed.

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

A. the debtor, Portia Merie Stewart ("Debtor"), has not filed tax returns for 2020 and 2021.

B. Debtor is delinquent in Plan payments.

C. Debtor has failed to provide necessary information for Schedules A/B, C, and I.

D. Debtor may fail the liquidation analysis.

DEBTOR'S REPLY

Debtor filed a reply on March 28, 2023. Dckt. 25. Debtor states:

1. Their taxes are being prepared, and they have submitted their returns to their CPA.

2. Debtor is now current on Plan payments.

3. Debtor has corrected their amendments.

4. Debtor has amended their exemptions, which helps with the liquidation analysis.

DISCUSSION

Trustee's objections are well-taken

Failure to File Tax Returns

Debtor admitted at the Meeting of Creditors that the federal income tax return for the 2020 and 2021 tax years have not been filed. Filing of the return is required. 11 U.S.C. §§ 1308, 1325(a)(9). Failure to file a tax return is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Delinquency

Debtor is $1,910.00 delinquent in plan payments, which represents one month of the $1,910.00 plan payment. Before the hearing, another plan payment will be due. According to Trustee, the Plan in § 2.01 calls for payments to be received by Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13.

Debtor indicates they are now current. At the hearing, the Trustee reported that the Debtor was now current on Plan payments.

Missing Information in Schedules A/B, C, and I

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.

Trustee has indicated that Debtor disclosed that there was a deposit of $23,700.00 but has denied any financial accounts in the original Schedule A/B. (Dckt. 11). Further, Debtor has inappropriately listed "electrical appliances" under section 704.111 on Debtor's Schedule C. (Dckt. 11). As section 704.111 references no exemption in existence, this appears to be a typographical error. Finally, Debtor has failed to include additional income–rent from a roommate and selling clothes on Pintrest–in her Schedule I, that Debtor admitted during the meeting of the creditors. (Dckt. 23).

Here, Debtor has provided amended schedules A/B, C, and I. (Dckt. 27 and 28). Debtor has included the $23,700.00 funds in her schedules and has exempted these funds under schedule B and C.

(Dckt. 28 and 27 respectively). Debtor has also provided an amended Schedule C with the appropriate exemption section for electrical appliances, 704.020. (Dckt. 28). Finally, Debtor has included her "roommate" as a source of additional income under Schedule I. (Dckt. 27).

However, Debtor has not included the sale of clothes that she indicated during the meeting of the creditors. However, Debtor indicates that this is not a "solid job" and will instead use $880.00 from her savings until she secures a steady job. (Dckt. 25).

It appears Debtor's amendments have resolved Trustee's concerns.

Debtor Fails Liquidation Analysis

Debtor's plan fails the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). Trustee states that Debtor is no longer employed, has not indicated any payments of $600 in the Statement of Financial Affairs, and it is unclear how much of Debtor's savings remains.

Debtor has indicated that with the additional income from her roommate in conjunction with using $880 from her savings will satisfy the monthly payments of $1,910.00 until Debtor can secure a steady job. (Dckt. 25).

Although Debtor has remedied many of the issues described by Trustee, the Court is unable to determine whether or not Debtor passes the liquidation analysis. Without additional information as to how much of Debtor's savings remains and when Debtor is likely to secure a steady job, the court is unable to determine the feasibility of the Plan.

At the hearing the Parties agreed to continue the matter to allow Debtor further opportunity to address the remaining issues.

Debtor's Response

Debtor filed a Response on May 23, 2023. Dckt. 44. Debtor states the following:

1. Ability to Make Plan Payments -

    a. Debtor has submitted tax returns for the years 2020, 2021, and 2022.

    b. Debtor is current on Plan payments.

    c. Debtor has made the appropriate amendments.

    d. Debtor opposed Objection to Exemption as to Wages.

2. Liquidation -

    a. Debtor has amended Schedule B & C, which has exempted the above wages. If Debtor is not successful in opposing Trustee's Objection to Exemptions, the Plan will fail.

The court notes, on May 25, 2023, Trustee's Objection to Claimed Exemptions was sustained without prejudice. Order, Dckt. 48. Therefore, as Debtor concedes, the Plan fails.

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 an order substantially in the following form holding that:

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

FINAL RULINGS

20.	**23-20801-E-13** **APN-1** **20 thru 21**	**BRANDON HARDING AND KATHERINE PIERCE** **Richard Hall**	**OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK NATIONAL ASSOCIATION** **5-5-23 [14]**

Final Ruling: No appearance at the June 6, 2023 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on May 5, 2023. By the court's calculation, 32 days' notice was provided. 14 days' notice is required.

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Subsequent to the filing of this Objection, Debtor filed an Amended Plan and corresponding Motion to Confirm on May 26, 2023. Dckts. 36, 39. Filing a new plan is a de facto withdrawal of the pending plan. The Objection is sustained, and the plan is not confirmed.

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

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

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

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

21. 23-20801-E-13 DPC-1 | **BRANDON HARDING AND KATHERINE PIERCE** **Richard Hall** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **5-11-23 [18]**

Final Ruling: No appearance at the June 6, 2023 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and parties requesting special notice on May 11, 2023. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Subsequent to the filing of this Objection, Debtor filed an Amended Plan and corresponding Motion to Confirm on May 26, 2023. Dckts. 36, 39. Filing a new plan is a de facto withdrawal of the pending plan. The Objection is sustained, and the plan is not confirmed.

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

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

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

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

22. 18-23006-E-13 HLG-1 — CARLA GALBRAITH — Kristy Hernandez — MOTION TO MODIFY PLAN — 4-28-23 [85]

Final Ruling: No appearance at the June 6, 2023hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on May 1, 2023. By the court's calculation, 36 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 Modify the Confirmed Chapter 13 Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), (4) 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Modify the Confirmed Chapter 13 Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Carla T Galbraith ("Debtor"), seeks to modify their Chapter 13 Plan confirmed on July 30, 2018. The

modification requests the court to apply $9,766.10 in insurance proceeds on hand with the Trustee to Debtor's delinquent balance. All other terms remain the same. The Chapter 13 Trustee, David P. Cusick ("Trustee"), filed a Response indicating nonopposition on May 22, 2023. Dckt. 90. The court construes Trustee's statement of nonopposition as a written stipulation approving the minor modifications.

The Modifications to the Chapter 13 Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Carla T Galbraith ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and Debtor's Modified Provisions to their Confirmed Chapter 13 Plan, Dckt. 85, are approved. Debtor's Counsel shall prepare an appropriate order approving the modifications, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

23. 23-20614-E-13 MRL-1 | **HAYDEN/MANDY COIT** | **MOTION TO CONFIRM PLAN**
Mikalah Liviakis | **4-26-23 [26]**

Final Ruling: No appearance at the June 6, 2023 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 26, 2023. By the court's calculation, 41 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Hayden Scott Coit and Mandy Erin Coit ("Debtor") has provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"),filed a Non-Opposition on May 10, 2023. Dckt. 32. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Hayden Scott Coit and Mandy Erin Coit ("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 26, 2023, 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.

24. 23-20523-E-13 DPC-2 | **LUIS GUTIERREZ** | **Gary Fraley** | **OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS** | **5-9-23 [26]**

Final Ruling: No appearance at the June 6, 2023 hearing is required.

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

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

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

The Objection to Debtor's Claim of Exemptions having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

25. 22-22624-E-13 MET-3 | **MATTHEW/MICHELE KING** | **MOTION TO CONFIRM PLAN**
Mary Ellen Terranella | **4-12-23 [52]**

Final Ruling: No appearance at the June 6, 2023 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 12, 2023. By the court's calculation, 55 days' notice was provided. Additionally, the Amended Notice of Motion was served on April 13, 2023. 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 Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Matthew David King and Michele Elizabeth Prather King ("Debtor") has provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on May 30, 2023. Dckt. 61. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Matthew David King and Michele Elizabeth Prather King ("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 12, 2023, 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.

26. 22-20137-E-13 DPC-1

RAYMOND WILLIAMS AND DARCELL HASKINS
Paul Baines

CONTINUED OBJECTION TO CLAIM OF CARMAX AUTO FINANCE, CLAIM NUMBER 1
2-14-23 [32]

Final Ruling: No appearance at the June 6, 2023 hearing is required.

Local Rule 3007-1 Objection to Claim—Hearing Not Required.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, other parties in interest, and Office of the United States Trustee on February 14, 2023. By the court's calculation, 56 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

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

The Objection to Proof of Claim Number 1-1 of CarMax Auto Finance is dismissed without prejudice.

David Cusick, the Chapter 13 Trustee, ("Trustee") requests that the court disallow the claim of CarMax Auto Finance ("Creditor"), Proof of Claim No. 1-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of $859.25. Claim. Upon review of the Claim and Trustee's assertions, it appears:

1. Trustee has disbursed $450.12 to Creditor based on the Claim filed by Creditor. However, after review of the Claim, it appears Creditor "terminated" the claim on January 21, 2022. The vehicle is not listed on Debtor's Schedules, therefore, it appears the vehicle was traded in prior to filing for bankruptcy.

2. The Claim asserts that Creditor terminated an amount of $25,185.26 on the date of the bankruptcy filing, and there is now a balance of $859.25.

3. Upon review of Claim 11-1, it appears Debtor traded in the vehicle that was financed through Creditor to purchase a new vehicle on January 15, 2022 through Carvana. It appears Debtor is financing the new vehicle through Carvana. It is unclear whether Debtor paid off the entire amount owed to Creditor during the trade-in, or whether Creditor retained a lien on the new vehicle.

    a. If Debtor traded in the vehicle, unless Creditor retained a lien on the new vehicle, it appears Creditor no longer holds a secured interest. If Creditor holds any interest, it would be an unsecured claim in the amount of $859.25.

4. The Trustee is unsure whether the Creditor has issued a refund to the Debtor, or is the Creditor has retained those funds.

DISCUSSION

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

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

At the hearing, the Trustee requested to have this matter continued as the Parties worked to correct the Proof of Claim that has been filed.

Trustee's *Ex Parte* Motion to Dismiss

On May 25, 2023, Trustee filed a request to dismiss Trustee's Objection pursuant to Federal Rules of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041 due to:

1. Creditor refunded overpayment to Debtor and Debtor returned the amount to Trustee on May 11, 2023.

Trustee having the right to request dismissal of the objection 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, the Chapter 13 Trustee's Objection is dismissed without prejudice, and the court removes this Objection from the calendar.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of CarMax Auto Finance ("Creditor"), filed in this case by David Cusick, the Chapter 13 Trustee ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is dismissed without prejudice

27. 20-24952-E-13 TBG-1 | **TERRY THOMPSON AND MELISSA MAST** | **MOTION TO MODIFY PLAN 4-28-23 [34]**

Stephan Brown

CASE DISMISSED: 5/14/23

Final Ruling: No appearance at the June 6, 2023 hearing is required.

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

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

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

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

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

28. 22-21352-E-13 SMJ-1 — ANGELA/JOHN HOFFMAN — Scott Johnson — MOTION TO MODIFY PLAN — 4-21-23 [32]

Final Ruling: No appearance at the June 6, 2023 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 21, 2023. By the court's calculation, 46 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Angela Michelle Hoffman and John Michael Hoffman ("Debtor"), has filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on May 16, 2023. Dckt. 39. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Angela Michelle Hoffman and John Michael Hoffman ("Debtor") having been

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

IT IS ORDERED that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on April 21, 2023, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

29.	**20-21358-E-13**	**DEANNE VASQUEZ**	**CONTINUED OBJECTION TO CLAIM OF INTERNAL REVENUE SERVICE, CLAIM NUMBER 4**
	DPC-1	**Mikalah Liviakis**	**2-14-23 [20]**

Final Ruling: No appearance at the June 6, 2023 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on, Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on February 14, 2023. By the court's calculation, 56 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered.

The Objection to Proof of Claim Number 4-1 of Internal Revenue Service is dismissed without prejudice.

David P. Cusick, the Chapter 13 Trustee, ("Objector") requests that the court disallow the claim of Internal Revenue Service ("Creditor"), Proof of Claim No. 4-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be priority unsecured in the amount of $1,962.12 for 2017

taxes and $2,354.20 for 2019 taxes. Creditor filed an amended claim which shows only $403.12 for 2017 taxes.

Objector objects to determine the proper amount of the claim.

It is unclear if whether (1) $403.12 is the current balance of the 2017 taxes or (2) whether 2017 was the total amount due for 2017 taxes, not $1,962.12. If the later, Objector asserts that they have overpaid Creditor and Debtor should be refunded.

DISCUSSION

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

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

At the hearing the Trustee requested this matter be continued as the Parties are working to address this issue.

Trustee's Supplemental *Ex Parte*
Motion to Dismiss Objection

On May 25, 2023, Trustee filed a Supplemental *Ex Parte* Motion to Dismiss Trustee's Objection. Trustee states Creditor refunded $658.89 on March 21, 2023 and has advised another $16.65 refund will issue. Trustee states they no longer object to the claim.

Trustee having the right to request dismissal of the objection 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, the Chapter 13 Trustee's Objection is dismissed without prejudice, and the court removes this Objection from the calendar.

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

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

The Objection to Claim of Internal Revenue Service ("Creditor"), filed in this case by David P. Cusick, the Chapter 13 Trustee, ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is dismissed without prejudice.

30.	**23-20698-E-13** **CK-1**	**CODY/TARA ULBERG** **Catherine King**	**MOTION TO CONFIRM PLAN** **4-26-23 [20]**

Final Ruling: No appearance at the June 6, 2023 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 26, 2023. By the court's calculation, 41 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Cody Wayne Ulberg and Tara Ronielle Lynn Ulberg ("Debtor") has provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"),filed a Non-Opposition on May 8, 2023. Dckt. 28. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Cody Wayne Ulberg and Tara Ronielle Lynn Ulberg ("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 26, 2023, 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.