

**UNITED STATES BANKRUPTCY COURT**  
Eastern District of California

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

**July 14, 2020 at 2:00 p.m.**

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<b>1.</b>	<b><u>19-25608-E-13</u></b> <b><u>PGM-2</u></b>	<b>CECILIA SMITH</b> <b>Peter Macaluso</b>	<b>MOTION TO MODIFY PLAN</b> <b>6-1-20 <a href="#">[82]</a></b>
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**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—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 June 1, 2020. By the court's calculation, 43 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).

<b>The Motion to Confirm the Modified Plan is denied.</b>
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The debtor, Cecilia Smith ("Debtor") seeks confirmation of the Modified Plan due to "several changes/problems." Declaration, Dckt. 85. The Modified Plan provides the remainder of the payments to be made through monthly payments of \$1,600.00 for 52 months, commencing June 25, 2020, and a 4 percent dividend to unsecured claims totaling \$24,007.38. Modified Plan, Dckt. 84. 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 June 24, 2020. Dckt. 95. Trustee opposes confirmation of the Plan on the basis that:

- A. The plan's additional provisions may improperly alter the rights of a claim secured only by an interest in debtor's principal residence, contrary to 11 U.S.C. § 1322(b)(2).
- B. Debtor has not provided an explanation as to how she will afford the Modified plan.

## DEBTOR'S REPLY

Debtor filed a Reply to the Trustee's Objection on July 7, 2020. Dckt. 98. Debtor explains that she is not opposed to striking the contested language in Section 7.02 of the proposed plan and providing for the post-petition arrearage as a Class 1 claim in the order modifying the plan.

Additionally, Debtor will meet with counsel on July 10, 2020<sup>FN.1</sup> to discuss the feasibility of the plan, and to address Trustee's concerns. *Id.* Lastly, Debtor requests a continuance to allow her time to properly supplement the record. *Id.*

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FN.1. The Reply states that "Debtor is scheduled to meet with counsel June 10, 2020." The court takes that as a clerical error since the language allows the court to assume that the meeting was taking place in the future, as in July 10, 2020.

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## DISCUSSION

### Ensminger Provisions

Trustee argues that Debtor's Plan improperly modifies a claim secured only by a security interest in real property that is Debtor's principal residence. Creditor has filed Proof of Claim No. 7 indicating a secured claim in the amount of \$222,419.03, secured by a first deed of trust against the property commonly known as 4405 Calcutta Way, Sacramento, California. Debtor's Schedules indicate that this is Debtor's primary residence. This modification violates 11 U.S.C. § 1322(b)(2), which prohibits the modification of an obligation secured only by Debtor's residence. Additionally, Trustee points out that there is additional language that is not normally part of the authorized language.

With respect to the Guild Mortgage Company claim, the proposed terms of the Additional Provisions in the Plan (Dckt. 84 at 8) include:

- A. Notwithstanding the \$57,338.46 pre-petition, **\$7,089.16 (apx) post-petition arrearage**, and \$1,537.68 monthly contract installment set forth in Class 1, *supra*, the actual treatment for the Guild Mortgage Company secured claim shall be as set forth in these Additional Provisions for this Chapter 13 Plan.

Plan, Dckt. 84, p. 7 (emphasis added).

Trustee asserts that post-petition arrears are not addressed in the standard Ensminger language. Moreover, Trustee argues that Debtor proposes \$1,115.00 as an adequate protection payment to be applied first to the post-petition interest accruing and then for it to be applied to the principal.

Furthermore, the Additional Provisions under Section 7.02.5 for Events of Default, paragraph 4, states that the Debtor shall be in default if Debtor fails to timely pay post-petition property taxes or property insurance. Yet, Debtor's most recent Schedules do not include any expense for property taxes or insurance.

### **Failure to Afford Plan Payment**

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor's confirmed plan calls for payments to date of \$19,864.20. Debtor's has paid \$7,200.00 (or an average of \$800.00 per month) to date, but Debtor's Declaration asserts that the previous plan payments "were too high." *See* Dckt. 85.

The Modified Plan proposes monthly payments of \$1,600.00. Debtor offers no explanation as to how she will be able to afford the plan payments. No supplements to Debtor's Schedules have explained why the proposed payment would suddenly become affordable. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

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

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Cecilia Smith ("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.

**Final Ruling: No appearance at the July 14, 2020 hearing is required.**

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on May 11, 2020. By the court's calculation, 64 days' notice was provided. 28 days' notice is required.

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

**The Motion to Value Collateral and Secured Claim of Carmax Business Services, LLC ("Creditor") is granted, and Creditor's secured claim is determined to have a value of \$7,000.00.**

The Motion filed by Virginia Hall ("Debtor") to value the secured claim of Carmax Business Services, LLC ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 27. Debtor is the owner of a 2014 Ford Fusion Energi Titanium ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$7,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

## DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred in February 2017, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$14,500.00. Proof of Claim, Exhibit B. Dckt. 28. 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 \$7,000.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion

pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion to Value Collateral and Secured Claim filed by Virginia Hall (“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 Carmax Business Services, LLC (“Creditor”) secured by an asset described as 2014 Ford Fusion Energi Titanium (“Vehicle”) is determined to be a secured claim in the amount of \$7,000.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$7,000.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

**APPEARANCE OF GERALD GLAZER, ESQ.  
COUNSEL FOR DEBTOR REQUIRED FOR  
JULY 14, 2020 HEARING**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on May 11, 2020. By the court's calculation, 64 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 Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

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

The debtor, Virginia Hall ("Debtor") seeks confirmation of the Chapter 13 Plan. The Amended Plan provides for monthly payments of \$900.00 for 60 months, and a 0% dividend to unsecured creditors totaling \$409,440.42. Plan, Dckt. 19. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

**CHAPTER 13 TRUSTEE'S OPPOSITION**

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on June 17, 2020. Dckt. 35. Trustee opposes confirmation of the Plan on the basis that:

- A. The plan relies on a Motion to Value Collateral which is set for hearing

on the same day as this motion.

- B. Debtor may not be entitled to Chapter 13 relief under 11 U.S.C. § 109(e).

## **DEBTOR'S REPLY**

Debtor filed a reply to Trustee's Opposition. Dckt. 38. Debtor believes the Motion to Value Collateral will be granted, due to a lack of opposition being filed. The Debtor also alleges that this is a "fairly straightforward" case, where the court can exercise discretion under Section 105 and argues that denying Chapter 13 relief would waste judicial resources.

Additionally, Debtor notes that the IRS was originally listed in Debtor's schedules for \$8,000.00, but filed a claim for only \$119.80.

## **DISCUSSION**

### **Debtor's Reliance on Motion to Value Secured Claim**

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of Carmax Business Services, GC-2. The Motion to Value has been granted and Creditor's claim was valued at \$7,000.00, as sought by the Debtor. Thus, this Objection is solved in favor of Debtor.

### **Section for 109 Amount of Debt Compliance**

Debtor does not qualify for Chapter 13 treatment because the unsecured debt limit as calculated under 11 U.S.C. § 109(e) has been exceeded. That section limits Chapter 13 eligibility to individuals with regular income who owe "on the date of the filing of the petition, non-contingent, liquidated, unsecured debts of less than \$419,275.00 and non-contingent, liquidated, secured debts of less than \$1,257,850." The court in *In re Scovis* held that eligibility for Chapter 13 should be determined by the debtor's "originally filed schedules." Debtor's original Summary of Schedules indicates her unsecured claims total \$422,940.42. Schedule E/F, Dckt. 10, at 19. In her Amended Schedule E/F, Debtor states having a total of \$401,940.42 in unsecured claims. Amended Schedule E/F, Dckt. 18 at 11.

Debtor's legal authority asserted to rebut the Trustee's citation to the Bankruptcy Code is stated to be 11 U.S.C. § 105(a). No explanation is provided how 11 U.S.C. § 105(a) can be used to rescind the statutory provisions of the Bankruptcy Code.

The Trustee computes the unsecured debt as there being \$21,750 in priority unsecured claims, general unsecured claim in the amount of \$401,940.42, and then adds what Debtor asserts will be (presuming that valuation and bifurcation of a secured claim pursuant to 11 U.S.C. § 506(a)) an unsecured claim of \$7,500 from the projected amount that the secured claims exceed the value of collateral on Scheduled D.

Beginning with the original Schedules E and F, the unsecured claims as computed by Debtor are \$422,690.42. 11 U.S.C. § 109(e) limits an individual who may legally seek relief under Chapter 13 to one who has "noncontingent, liquidated, unsecured debts of less than \$419,275." Reading the plain language of 11 U.S.C. § 109(e), Congress bars Debtor from seeking relief through Chapter 13.

Debtor offers the court no legal basis for a federal judge to rewrite 11 U.S.C. § 109(e) and create a special, this Debtor only, law to grant Debtor relief that exists for no one else.

On April 16, 2020, Debtor filed an “amended” Schedule E/F. Dckt. 18. As this court has addressed in other context, amended schedules date back to the filing of this case, as opposed to supplemental schedules which relate to updated information that is valid effective at some time after the filing of the case. Debtor amends Schedule E/F to state that the priority unsecured claims are \$21,750 and the general unsecured claims are \$401,940.42. This amount totals \$423,690.42, again in excess of the \$419,275 statutory maximum established by Congress in the Bankruptcy Code.

Though not further amending Schedule E/F, in the Reply, Debtor states that the Internal Revenue Service, for whom Debtor listed an \$8,000 unsecured claim on Schedule E/F, has a proof of claim (Debtor failing to identify the proof of claim) saying that the amount really owed as of the commencement of this case is \$119.80. Reply, ¶ 5; Dckt. 38.

The Internal Revenue Service filed Proof of Claim 7-1 on April 6, 2020. This is ten days before Debtor filed Amended Schedule E/F stating that the Internal Revenue Service priority unsecured claim was \$8,000. Dckt. 18.

In looking at Proof of Claim No. 7-1, it clearly states that the claim in the amount of \$119.80 is just **ESTIMATED FOR 2018 AND 2019 TAX YEARS** because:

1 LIABILITY IS ESTIMATED BASED ON AVAILABLE INFORMATION  
BECAUSE THE RETURN HAS NOT BEEN FILED. THIS CLAIM MAY BE  
AMENDED AS NECESSARY AFTER THE DEBTOR FILES THE RETURN  
OR PROVIDES OTHER REQUIRED INFORMATION.

2 LIABILITY IS ESTIMATED BASED ON AVAILABLE INFORMATION  
BECAUSE THE RETURN HAS NOT BEEN FILED. THIS CLAIM MAY BE  
AMENDED AS NECESSARY AFTER THE DEBTOR FILES THE RETURN  
OR PROVIDES OTHER REQUIRED INFORMATION.

Proof of Claim 7-1, Footnotes 1, 2 (emphasis in original).

It appears that the Internal Revenue Service Proof of Claim is based on inaccurate and incomplete information, with the actual information known by the Debtor that Debtor’s actual tax obligation is substantially larger.

Additionally, Proof of Claim 7-1 states that Debtor has not filed pre-petition tax returns for 2018 and 2019. At the hearing, the Chapter 13 Trustee and the Debtor addressed the failure to file the tax returns for the two pre-petition years, **XXXXXXXXXX**

Based on the information provided by Debtor under penalty of perjury in original and Amended Schedule E/F, Debtor has established that Debtor does not meet the statutory requirements to qualify for obtaining relief under Chapter 13. Debtor, while citing to 11 U.S.C. § 105(a) offers no legal basis for this court ignoring the express statutory provisions of 11 U.S.C. § 109(e). See *Law v. Siegel*, 571 U.S.415, 421 (2014), stating:

It is hornbook law that §105(a) “does not allow the bankruptcy court to override explicit mandates of other sections of the Bankruptcy Code.” 2 Collier on Bankruptcy ¶105.01[2], p. 105-6 (16th ed. 2013). Section 105(a) confers authority to “carry out” the provisions of the Code, but it is quite impossible to do that by taking action that the Code prohibits.

...

We have long held that “whatever equitable powers remain in the bankruptcy courts must and can only be exercised within the confines of” the Bankruptcy Code. [citations omitted]

The Motion is denied, the Debtor establishing that Debtor does not meet the unsecured claim amount limitations as of the commencement of this case established by Congress.

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 29, 2020. By the court’s calculation, 15 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). Debtors, 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, -----

<p><b>The Motion to Incur Debt is granted.</b></p>
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Paul Stoddard and Ernestine Stoddard (“Debtors”) seek permission to refinance their mortgage on real property known as 10629 Coliseum Way, Rancho Cordova, California. They seek to obtain a refinancing loan through PennyMac Loan Services, LLC. This loan includes a down payment of \$2,529.00. The total amount financed is \$222,918.00, with monthly payments of \$1,264.00 over 30 years with a 2.875% fixed interest rate.

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 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 Incur Debt filed by Paul Stoddard and Ernestine Stoddard (“Debtors”) 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 Paul Stoddard and Ernestine Stoddard are authorized to incur debt pursuant to the terms of the agreement, Exhibit A, Dckt. 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 motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).**

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, Creditor, and Office of the United States Trustee on June 22, 2020. By the court's calculation, 22 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 hearing on the Motion to Value Collateral and Secured Claim of Travis Credit Union ("Creditor") is continued to 2:00 p.m. on ~~xxxxx~~, 2020. Creditor shall file supplemental opposition pleadings relating to the value of the Property on or before ~~xxxxxxxxxx~~, 2020, and Replies, if any, shall be filed and served on or before ~~xxxxxxxxxx~~, 2020.**

The Motion to Value filed by Donald Bryant ("Debtor") to value the secured claim of Travis Credit Union ("Creditor") is accompanied by Debtor's declaration. Declaration, Dekt. 17. Debtor is the owner of the subject real property commonly known as 1060 Zephyr Court, Vacaville, California ("Property"). Debtor seeks to value the Property at a fair market value of \$485,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

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

## **OPPOSITION**

Creditor has filed an Opposition. Dckt. 30. Creditor alleges that the property should be valued at \$576,000.00, per the VeroVALUE Valuation Report. Exhibit A, Dckt. 32. Creditor provides the Declaration of Deborah Miller to authenticate the Valuation Report. Dckt. 31. Additionally, Creditor intends to conduct a formal appraisal of the Property as soon as the Debtor makes the Property available for inspection.

Creditor argues that since the value of the Property exceeds the claim of the first mortgage bidder, Creditor is the holder of a secured claim. Creditor further argues that the claim should not be disallowed as a secured claim, and its lien should not be avoided.

The court has reviewed the VeroVALUE report relied upon by Creditor that has been filed as Exhibit A. Dckt. 32. Deborah Miller provides testimony under penalty of perjury to authenticate the report. Dckt. 31. However, in reviewing the Declaration, all Ms. Miller testifies to is that the VeroVALUE Report is attached to her Declaration as Exhibit A. Declaration, ¶ 5; *Id.*

Ms. Miller does not testify as to the value of the Property. Ms. Miller does not testify as to having prepared the report. Ms. Miller does not testify as to how the report was prepared. Ms. Miller does not testify that she obtained this report, how it was obtained, and how she knows it was obtained. Ms. Miller fails to authenticate the report as required by Federal Rules of Evidence 901 et seq.

But Creditor does not rely on the VeroVALUE Report as evidence of the value of the Property, what it wants is to proceed with discovery and obtain an appraisal of the Property. (Though Creditor appears to press for the court to rule based on the evidence presented, for which Creditor provided no properly authenticated, credible testimony and evidence of value, the court recognizes that Creditor expressly requests time for discovery.)

## **CONTINUANCE OF HEARING DISCUSSION**

Federal Rule of Bankruptcy Procedure 9014(c) incorporates the discovery rules from the Federal Rule of Civil Procedure as they are incorporated into Federal Rule of Bankruptcy Procedure 7026 et seq. Creditor's request to conduct discovery as necessary to obtain an appraisal of the property is granted.

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

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

The Motion to Value Collateral and Secured Claim filed by Donald Bryant ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the hearing on the Motion to Value Collateral and Secured Claim of Travis Credit Union ("Creditor") is continued to 2:00 p.m. on **xxxxx, 2020**. On or before Creditor shall file supplemental opposition pleadings relating to the value of the Property on or before **xxxxxxxxxx, 2020**, and Replies, if any, shall be filed and served on or before **xxxxxxxxxx, 2020**.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditor, and Office of the United States Trustee on June 22, 2020. By the court's calculation, 22 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 Solano First FCU ("Creditor") is granted, and Creditor's secured claim is determined to have a value of \$7,325.00.**

The Motion filed by Donald Bryant ("Debtor") to value the secured claim of Solano First FCU ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 22. Debtor is the owner of a 2013 Honda Accord ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$7,325.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

## **DISCUSSION**

The lien on the Vehicle's title secures a purchase-money loan incurred in August 2016, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$10,818.00. Dckt. 20. 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 \$7,325.00, the value

of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion to Value Collateral and Secured Claim filed by Donald Bryant (“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 Solano First FCU (“Creditor”) secured by an asset described as 2013 Honda Accord (“Vehicle”) is determined to be a secured claim in the amount of \$7,325.00, 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 \$7,325.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on June 22, 2020. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

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

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**The Motion to Avoid Judicial Lien is granted.**

This Motion requests an order avoiding the judicial lien of Kelkris Associates, Inc. dba Credit Bureau Associates ("Creditor") against property of the debtor, Donald Bryant ("Debtor") commonly known as 1060 Zephyr Court, Vacaville, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$16,053.84. Exhibit A, Dckt. 28. An abstract of judgment was recorded with Solano County on February 22, 2011, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$485,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total \$542,465.00 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(1) in the amount of \$1.00 on Schedule C. Dckt. 1.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no

equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor's exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

## **ISSUANCE OF A COURT-DRAFTED ORDER**

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

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Donald Bryant ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the judgment lien of Kelkris Associates, Inc. dba Credit Bureau Associates, California Superior Court for Solano County Case No. FCM117582, recorded on February 22, 2011, Document No. 201100016040, with the Solano County Recorder, against the real property commonly known as 1060 Zephyr Court, Vacaville, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee and Office of the United States Trustee on June 30, 2020. By the court's calculation, 14 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice).

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

<p><b>The Motion to Sell Property is granted.</b></p>
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The Bankruptcy Code permits Donna Snell, Chapter 13 Debtor ("Movant"), to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363. Here, Movant proposes to sell the real property commonly known as 1536 49th Street, Sacramento, California ("Property").

The proposed purchaser of the Property is Edward Ross, Mosswood Holdings LLC, and the terms of the sale are:

- A. The sales price will be \$442,000.00.
- B. Upon completion of the sale, Bank of America will release their lien on the property.
- C. Upon the sale, the first mortgage of \$188,872.19 will be paid to Bank of America. The listing and selling broker's commission will be paid at \$22,100.00. Other debits, title, tax recording and escrow charges will be paid at \$2,529.85.

D. Close of escrow will be 30 days from contract acceptance.

## TRUSTEE'S NON-OPPOSITION

Trustee filed a statement of non-opposition in support of the sale on the basis that there will be sufficient proceeds to complete the plan with creditors receiving 100% of their claims. Dckt. 43.

## DISCUSSION

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because there will be sufficient proceeds to complete the plan with the creditors receiving 100% of their claims.

Movant has estimated that a five (5) percent broker's commission from the sale of the Property will equal approximately \$22,100.00. The commission will be divided equally between Chapter 13 Debtor's agent Laura M. Miller/Keller Williams Realty Capital Valley receiving 2.5 percent and Buyer's agent Kelly Piccolo-Allen/Realty One Group receiving 2.5 percent. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker an amount not more than five (5) percent commission.

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

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

The Motion to Sell Property filed by Donna Snell, 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 Donna Snell, Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Edward Ross, Mosswood Holdings LLC or nominee ("Buyer"), the Property commonly known as 1536 49<sup>th</sup> Street, Sacramento, California ("Property"), on the following terms:

- A. The Property shall be sold to Buyer for \$442,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 41, and as further provided in this Order.
- B. The sale proceeds shall first be applied to closing costs, broker commissions, payoff of the first mortgage, and other customary and contractual costs and expenses incurred to effectuate the sale.
- C. Chapter 13 Debtor is authorized to execute any and all

documents reasonably necessary to effectuate the sale.

- D. Chapter 13 Debtor is authorized to pay a real estate broker's commission in an amount not more than 5 percent of the actual purchase price upon consummation of the sale. The 5 percent commission shall be divided equally and paid in the amount of 2.5 percent to Chapter 13 Debtor's agent, Alan Vega and 2.5 percent to Buyer's agent, Jose L. Chavez.

9. [18-23557-E-13](#) **DANIEL BUTLER**  
[JBA-3](#) **Elliot Gale**

**MOTION FOR TURNOVER OF EXEMPT  
SALES PROCEEDS**  
6-18-20 [\[122\]](#)

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 18, 2020. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

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<b>The Motion for Turnover is granted.</b>
--

Daniel Butler, the Chapter 13 Debtor, ("Movant") in the above entitled case and moving party herein, seeks an order for turnover as to the exempt sales proceeds for the real property commonly known as 3220 Groveland Way, Antelope, California ("Property"). Movant seeks to compel David P. Cusick ("Chapter 13 Trustee") to deliver Property to Movant.

## Review of Motion

The Motion states the following grounds upon which the Debtor's right to possession of the sale proceeds is based:

- A. Debtor filed his Chapter 13 case on June 6, 2018, and the court granted his Motion to Sell on September 16, 2019. Dckt. 105.
- B. The Order required that the Trustee receive all proceeds from the sale, and turnover the exempt portion of such proceeds only upon further order by the court.
- C. Debtor filed an Amended Schedule C on February 12, 2020. Dckt. 121. No objections have been filed. The Amended Schedule C exempts \$25,800.00 of the sales proceeds under C.C.P. 703.140(b)(5).
- D. It is Debtor's understanding that Trustee will not oppose the instant Motion.

On July 7, 2020, Trustee filed a Response indicating non-opposition to the turnover of the sale proceeds. Dckt. 126.

## DISCUSSION

The Bankruptcy Code provides in 11 U.S.C. § 542(a) (emphasis added) that a person who is in possession of property of the bankruptcy estate has the affirmative duty to turnover possession of obtain property of the bankruptcy estate to the trustee, which include a Chapter 13 debtor or Chapter 11 or 12 debtor in possession, as follows:

Section 542. Turnover of property to the estate

(a) Except as provided in subsection (c) or (d) of this section, **an entity**, other than a custodian, **in possession, custody, or control, during the case, of property** that the trustee may use, sell, or lease under section 363 of this title, or that the debtor may exempt under section 522 of this title, **shall deliver to the trustee**, and account for, **such property** or the value of such property, unless such property is of inconsequential value or benefit to the estate. . . .

The term "entity" is defined in 11 U.S.C. § 101 (15) (emphasis added) as follows, "The term **"entity"** **includes person**, estate, trust, governmental unit, and United States trustee.

A trustee or debtor may seek turnover of property of the Estate. 11 U.S.C. § 542. However, Federal Rule of Bankruptcy Procedure 7001(emphasis added) applies, stating:

An adversary proceeding is governed by the rules of this Part VII. **The following are adversary proceedings:**

(1) a **proceeding to recover** money or **property**, other than a

proceeding to compel the debtor to deliver property to the trustee, or a proceeding under §554(b) or §725 of the Code, Rule 2017, or Rule 6002;

...

(7) a proceeding to obtain an injunction or other equitable relief, except when a chapter 9, chapter 11, chapter 12, or chapter 13 plan provides for the relief;

The present request for relief has been filed as a motion, a contested matter (Fed. R. Bankr. P. 9014) and not an adversary proceeding.

### **Enforcement of Turnover Orders**

Though the court does not anticipate there being any failure by Trustee to comply with the order of this court, the Ninth Circuit has reaffirmed a bankruptcy judge's power to issue corrective sanctions, including incarceration, to obtain a person's compliance with a court order. *Gharib v. Casey (In re Kenny G Enterprises, LLC)*, No. 16-55007, 16-55008, 2017 U.S. App. LEXIS 13731 (9th Cir. July 28, 2017). Though an unpublished decision, *Gharib* provides a good survey of the reported decisions addressing the use of corrective sanctions by an Article I bankruptcy judge. *Id.* at \*2–5.

No opposition stated as to the turnover of proceeds, the Motion is granted. Trustee is ordered to turnover the \$25,800.00 proceeds to Debtor.

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 for Turnover of Property filed by Daniel Butler, 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 Turnover of Property is granted.

**IT IS FURTHER ORDERED** that David P. Cusick ("Chapter 13 Trustee"), shall deliver on or before **xxxx xx, 2020**, possession of sale proceeds from the sale of the real property commonly known as 3220 Groveland Way, Antelope, California ("Property") to Daniel Butler (Chapter 13 Debtor).

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 19, 2020. By the court's calculation, 56 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

<p><b>The Motion to Confirm the Plan is denied.</b></p>
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The debtor, Paul Ottaviano ("Debtor"), seeks confirmation of the Chapter 13 Plan. The Plan provides for monthly plan payments of \$2,484.37 for 60 months, with a 100% dividend to creditors with unsecured claims totaling \$26,673.00. Plan, Dckt. 73. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

#### CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on June 17, 2020. Dckt. 78. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor is delinquent in payments.
- B. The plan relies on a Motion to Value Collateral.
- C. The plan will not be completed within 60 months.

## **DISCUSSION**

### **Delinquency**

The Chapter 13 Trustee asserts that Debtor is \$1,051.85 delinquent in plan payments, which represents a partial month of the \$2,359.00 plan payment. Before the hearing, another plan payment will be due. According to the Chapter 13 Trustee, the Plan in § 2.01 calls for payments to be received by the Chapter 13 Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

### **Debtor's Reliance on Motion to Value Secured Claim**

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of Hyundai Motor Finance. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6). However, on June 23, 2020, the Motion to Value Collateral was granted, and Creditor's secured claim was determined to have a value of \$10,419.00. Dckt. 81. Thus, this Objection is solved in favor of Debtor.

### **Failure to Complete Plan Within Allotted Time**

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Chapter 13 Trustee, the Plan will complete in 114 months due to the Second Amended Plan calling for plan payments at the rate of \$2,484.37 per month, and to pay 100% to creditors of unsecured claims, estimated at \$26,673.00. However, the Trustee's records show a total of \$73,938.61 in unsecured claims have been filed to date. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on March 3, 2020. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

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

**The Objection to Confirmation of Plan is sustained and confirmation of the Plan is denied.**

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

- A. The plan proposes paying student loans directly as an expense, which unfairly discriminates against other unsecured creditors.
- B. Debtor has claimed exemptions pursuant to California Civil Code of Procedure section 703.140 and appears married, but has not filed a spousal waiver.
- C. Trustee is not clear what Debtor's marital status is since he indicates on the Statement of Financial Affairs he is not married, and no income from the spouse is listed.
- D. Debtor did not provide Debtor's social security number at the Meeting of Creditors.

#### DEBTOR'S REPLY

Debtor filed a Reply on March 17, 2020. Dckt. 30. Debtor argues:

- 1. The plan does not unfairly discriminate because the student loan debt

belongs to the non-filing spouse, and the non-filing spouse is not receiving a discharge. FN.1.

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FN.1. The court notes that the argument appears to be that since Debtor's heretofore unidentified spouse has a financial obligation with the Debtor, then it is proper to divert monies outside of the bankruptcy plan limits to financially benefit that spouse. The "mere" fact that an obligation is nondischargeable is not a basis for preferring that creditor with excess payments (as well as the debtor who cannot discharge debt) at the expense of other creditors in that class of claims.

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2. A spousal waiver was filed with the court on March 12, 2020.
3. An amended Statement of Financial Affairs was filed to include the non-filing spouse's information.
4. Debtor will bring his social security card to the April 30, 2020, continued Meeting of Creditors.

## **TRUSTEE'S STATUS REPORT**

Trustee filed a Status Report on March 24, 2020. Dckt. 33. Trustee reports that the unfair discrimination and failure to provide a social security number have not been addressed.

## **MARCH 31 HEARING**

At the March 31, 2020, hearing the court granted a continuance to allow Debtor's counsel to further brief whether the plan's treatment of student loan debt constitutes unfair discrimination. Dckt. 35.

## **MAY 12, 2020 HEARING**

Despite the continuance afforded to allow Debtor additional briefing, nothing has been filed. The Parties agreed to one final continuance for Debtor to file the additional opposition and related pleadings.

## **DISCUSSION**

On July 1, 2020, Debtor filed a Supplemental Response and the Declaration of Robert Edward Ackerman and Yvette Hall. Dckts. 40, 41. Debtor and his spouse assert that they each have their own financial aid debt and have never been consolidated in any way. Declaration, Dckt. 41, at 1. These debts are held by two different creditors (Navient and Nelnet) and have been since their inception. *Id.* The debts were acquired before their recent marriage. *Id.*

Further, Debtor and spouse argue that given that the debt being paid directly from the debtor's household budget is for the nonfiling spouse's separate debt that has no opportunity to participate in the plan and is a payment that has been made by the non-filing spouse consistently it is not unfair or prejudicial for the debtor's creditors that the non-filing spouse continue to pay her personal debt directly. Supplemental Response, Dckt. 40 at 1.

Debtor and spouse also argue that by non-filing spouse dedicating her income to household expenses, this allows for Debtor's plan to be feasible. *Id.* Debtor stands by his assertion that this debt should not be found prejudicial to any creditor because this debt is not eligible to be part of the plan and is an expense solely of the non-filing spouse. *Id.*

Trustee filed a Reply to Debtor's Supplemental Response on July 8, 2020. Dckt. 44. Trustee continues to object to the spouse's student loan payment on the basis that Debtor's non-filing spouse appears to be paying more than required and will pay off the claim prior to the end of the plan at that rate, potentially in about 48 months. *Id.* at 1. Trustee argues that if the portion non-filing spouse were applied to the Debtor's plan, an additional \$108 could be paid into the plan for the remaining 54 months, which would pay an additional \$5,832 to unsecured. *Id.* at 2.

Lastly, Trustee notes that Debtor has provided Social Security identification, which resolves the only other objection to confirmation. *Id.*

In substance, Debtor's assertion is that since the non-debtor spouse's community income is being included in this case, then the Debtor should be allowed to favor one of his wife's creditors over another because it is advantageous to his non-debtor spouse. In effect, Debtor is creating an argument that by hiding his non-debtor spouse outside the bankruptcy case, he can bestow financial favors on her by seeing that creditors for which she is a co-debtor get favored treatment to the prejudice of all the other creditors in this case.

Debtor and his non-debtor spouse made the choice to only have the Debtor file bankruptcy. That choice does not vitiate the provisions of 11 U.S.C. § 541 and the requirements for confirmation of a Chapter 13 Plan. Though Debtor tries, he cannot do indirectly what he and his non-debtor spouse cannot do directly under the Bankruptcy Code.

In this Chapter 13 Plan, Debtor provides that all of the disfavored creditors with unsecured claims will be paid only a 2% dividend, while the creditor holding his spouse (who is hiding outside of bankruptcy) will get 100% payments. For the disfavored creditors receiving a 2% dividend, presumably the non-debtor spouse will be asserting the "secret discharge" that applies in community property states.

Debtor's attempt to divert money out of his case, provide financial favors for his non-debtor spouse, and give his non-debtor spouse the discharge provided in 11 U.S.C. § 524(a)(3) manifests bad faith in the filing of the bankruptcy case and the prosecution of this plan. Such bad faith may be sufficient to preclude the confirmation of any plan, not only in this case, but any future case filed by Debtor, or his non-debtor spouse. <sup>FN. 1</sup>

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FN. 1. Debtor's bad faith is further demonstrated by the failure to provide any legal authority for the proposition that monies could be diverted from this bankruptcy case to financially benefit his spouse, the non-debtor spouse who is hiding outside this case. In Debtor's first Reply, Dckt. 30, no legal authorities are cited. In Debtor's Supplemental Response, for which Debtor was given additional time to address these assertions, no legal authorities are provided, but the Debtor merely stating that he thinks it should be such.

The Federal Judicial System is not one in which wild claims are asserted and a parties attempts to slide it by the court. As the Supreme Court directed in *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, n.14 (2010), relief granted by a federal judge must be based on the law and the evidence.

The court concludes that after the requisite due legal research any legal authorities existed for the result opined by the Debtor, the Debtor would have included it in the Supplemental Brief.

While one may view the court's characterization of the Debtor's conduct and legal strategy as harsh, the court has now seen from several different attorneys (from whom the court would not have otherwise expected it) a "just ask for it without regard to the law" legal practice.

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The Objection to Confirmation is sustained and confirmation of the Plan is denied.

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

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

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

**IT IS ORDERED** that the Objection to Confirmation of Plan is sustained and confirmation of the Plan is denied.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtors and Debtors' Attorney on May 27, 2020. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

<b>The Objection to Confirmation of Plan is <span style="color: red;">XXXXX</span>.</b>
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The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that the Debtors failed to provide proof of her Social Security Number at the First Meeting of Creditors held on May 21, 2020.

## **DISCUSSION**

### **Failure to Provide Social Security Number**

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

Debtor filed a Reply on June 9, 2020 stating that he ordered a Social Security card but was not given a time line as to when he would receive it. Dckt. 19. Debtor stated that if he received the card by June

11, 2020, the date set for the continued meeting, Debtor would present it then. *Id.* Debtor failed to appear at the Second Meeting of Creditors held on June 11, 2020. Trustee's June 11, 2020 Docket Entry Statement. The continued Meeting was set for July 9, 2020. Debtor appeared at the July 9, 2020 but neither the Joint Debtor nor Debtor's Counsel appeared. Trustee's July 9, 2020 Docket Entry Statement. The Meeting was concluded as to Debtor. *Id.*

At the hearing, ~~xxxxxxxxxxxxxx~~.

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

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

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

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

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

~~————— **IT IS ORDERED** that the Objection is overruled, and Christian Kiefer and Macie Kiefer's ("Debtors") Chapter 13 Plan filed on April 6, 2020, is confirmed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

**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 **Not** Provided. No Certificate of Service was filed with the Motion and supporting documents.

At the hearing, **xxxxxxxxxx**

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

<b>The Objection to Confirmation of Plan is <del>sustained</del>.</b>
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The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that the plan will not be complete within 60 months, which is the maximum time allowed under 11 U.S.C. § 1322(d).

## **DISCUSSION**

Trustee's objections are well-taken.

### **Plan Term is Greater 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 67 months due to the increased amount of the Internal Revenue Service's ("IRS") claim. On Debtor's Schedules, the IRS claims were estimated at \$30,000 (priority) and \$14,339.00 (unsecured), but the IRS claims were filed for \$44,522.01 (priority) and \$18,138.50 (unsecured). It will take 67 months to pay the plan in full. Thus, the Plan exceeds

the maximum sixty months allowed under 11 U.S.C. § 1322(d).

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

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

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

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

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

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

**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 Debtors and Debtor's Attorney on June 18, 2020. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

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

- A. Debtor's Plan relies on a Motion to Value Collateral.
- B. Debtor admitted in the Meeting of Creditors that they may have assets that are not identified on Schedule B.
- C. The Plan exceeds the maximum amount of time allowed under 11 U.S.C. § 1322(d).
- D. Debtor's Plan proposes to pay a higher interest than required, which is not in the best interests of the bankruptcy estate.
- E. The ongoing mortgage is not properly provided for in the Plan.

F. Debtor failed to estimate the total of priority creditors.

## **DISCUSSION**

Trustee's objections are well-taken.

### **Debtor's Reliance on Motion to Value Secured Claim**

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of Veripro Solutions. Debtor filed a Motion to Value the Secured Claim of Veripro Solutions. Dckt. 23. The Motion to Value Collateral has been set to be heard at 2:00 p.m. on August 23, 2020.

On July 6, 2020, Debtor withdrew the Debtor's Declaration in support of the Motion to Value. Dckt. 36. That was the only testimony as to value of the Property that was presented in support of the Motion.

### **Debtor's Failure to Identify All Assets on Schedule B**

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor's plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). The Chapter 13 Trustee asserts that Debtors admitted at the Meeting of Creditors held June 11, 2020, they may have assets not identified on Schedule B. Mr. Bautista has been an individually contracted Life Insurance agent for 12 years and may receive residual income from sold policies. It is unclear to the Trustee the amount of Debtor's residual income.

### **Plan Term is Greater 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 more than 60 months due to the Plan calls for payments totaling \$48,000, to make payments totaling \$73,374.55, not counting interest and Trustee fees. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

### **Paying Unnecessary Interest**

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor proposes in the plan to pay 13% interest to PHH Mortgage and 13% interest to GM Financial. The PHH Mortgage note attached to the claim shows interest is paid on unpaid principal not on unpaid interest, (Claim No. 3, Page 41, Section 2.) The claim shows \$9,399.39 of interest due, (Claim No. 3, Page 4, Part 2), so it appears the Debtor should pay 0% interest on \$9,399.39 of the arrears and a positive interest rate on the remainder. Interest rate is normally determine by the Court as the prime rate, (currently 3.25%), plus a risk factor of usually 1.5%, so the Debtor should pay at least 4.75% to PHH Mortgage for the remainder of the arrears, (other than interest due), and to GM Financial.

### **Ongoing Mortgage not Properly Provided for**

Debtor provides for PHH Mortgage both as Class 1 and Class 4. A Class 4 claim is long term and not in default. A Class 1 claim is long term and in default. Based on Proof of Claim No. 3, the mortgage loan is long term and is in default. Trustee contends that Debtor could have proposed nonstandard

provisions in §7 of the plan but Debtor has failed to do so. Moreover, Debtor has failed to present evidence as to why they became delinquent and do not require a Trustee to make certain it does not happen again.

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 28, 2020. By the court’s calculation, 47 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

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

The debtors, Jason Peter Rupchock and Tiffanie Ann Rupchock (“Debtor”) seek confirmation of the Chapter 13 Plan. The Plan provides payments of \$1,250.00 per month for the remainder of the plan beginning on June 25, 2020 with a 0 percent dividend to unsecured claims totaling \$42,943.62. Plan, Dckt. 115. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

#### **CHAPTER 13 TRUSTEE’S OPPOSITION**

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on June 17, 2020. Dckt. 119. Trustee opposes confirmation of the Plan on the basis that:

- A. Trustee is unsure Debtor can afford the monthly plan payments.

#### **DISCUSSION**

##### **Failure to Afford Plan Payment**

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor’s Plan does not provide for payments on a 2017 Toyota Camry in the amount of

\$412.66 per month. Debtor's Declaration states their monthly average net income is \$7,795.88 with expenses of \$6,500.00 per month for a total disposable net income of \$1,295.88. Debtor's Decl., Dckt. 114. When the vehicle payment is factored in, Debtor's disposable income is \$1,665.86.

Additionally, Trustee points out that there is an unexplained reduction in income. Debtor's Declaration indicates a monthly net income of \$7,795.88. Dckt. 114. However, Debtor's income as listed in Schedule I states an amount of \$8,578.52. Dckt. 1. 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, 1323, and 1325(a) and is not confirmed.

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtors, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on May 28, 2020. By the court's calculation, 47 days' notice was provided. 14 days' notice is required.

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

**The Objection to Confirmation of Plan is overruled.**

Wells Fargo Bank, N.A. ("Creditor"), holding a secured claim, opposes confirmation of the Plan on the basis that:

- A. Debtor's Plan fails to cure the entire arrearage on Creditor's secured claim.
- B. Debtors will be unable to make plan payments when the additional arrearage is accounted for.

#### **DEBTOR'S RESPONSE**

Debtor filed a Response on June 4, 2020. Dckt. 19. Debtor proposes the following amendments be made in the order confirming the Plan:

- A. Section 2.01 of the Plan will be amended to \$3,451.00 per month.
- B. Section 3.07, Box 1, Amount of Arrears will be amended to \$41,400.83.

C. Section 3.07, Box 1, Arrearage Dividend will be amended to \$691.00.

## **DISCUSSION**

Creditor's objections are well-taken.

### **Failure to Cure Arrearage of Creditor**

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts \$41,400.83 in pre-petition arrearage. The Plan must, and it so clearly states that the amount of the arrearage stated in the proof of claim or order of the court, not the amount typed into the Plan form, is the arrearage to be cured. Plan, ¶ 3.04; Dckt. 27. Thus, the question is whether the plan is sufficiently funded to make the required arrearage cure payments.

Here, Debtor has proposed to amend Box, 1 Amount of Arrears in section 3.07 from \$38,000.00 to the full amount of \$41,400.83 in the order confirming the plan. This change brings the amount stated by the Debtor into conformity with the amount required under the Plan.

### **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 proposes in the Plan to make payments of \$3,388.00 per month for 60 months funded by a net income of \$3,386.88. This amount is insufficient when the remaining default in the amount of \$3,400.83 is provided for in order to fully cure the arrearage.

However, Debtor's Response also proposes amendments to increase the Plan payment from \$3,388.00 to \$3,451.00 and the arrears dividend from \$634.00 to \$691.00 in section 3.07, Box 1 of the Plan.

Debtor filed amendments to their Schedules on June 4, 2020, Dckt. 20. Specifically, Debtor reduced their expenses by \$65.00 in Schedule J by reducing their expenditures for entertainment from \$200.00 to \$135.00. This resulted in an increase in Debtor's net monthly income to \$3,451.88, which is sufficient to fund the increased monthly payment and arrears dividend. Thus, Debtor is able to comply with the Plan, and the Plan is confirmable.

The Plan, as amended by the Debtor at the hearing complies with 11 U.S.C. §§ 1322, 1325; the Objection is overruled, and the Plan, as amended at the hearing, 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 Objection to the Chapter 13 Plan filed by Wells Fargo Bank, N.A. ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection is overruled, and Edgar Eduardo Aguilar and Duliama Aguilar's ("Debtor") Chapter 13 Plan filed on May 13, 2020,

as amended with the following is confirmed:

- A. Section 2.01 of the Plan will be amended to \$3,451.00 per month.
- B. Section 3.07, Box 1, Amount of Arrears will be amended to \$41,400.83.
- C. Section 3.07, Box 1, Arrearage Dividend will be amended to \$691.00.

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

17.	<a href="#"><u>14-30222</u></a> -E-13 <a href="#"><u>20-2014</u></a> SCHOONOVER V. ELFORD	CAMERON ELFORD BHS-1 Peter Macaluso	<b>MOTION FOR SUMMARY JUDGMENT AND/OR MOTION FOR SUMMARY ADJUDICATION 5-27-20 [23]</b>
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<b>The hearing on the Motion for Summary Judgment is continued to 11:00 a.m. on July 23, 2020.</b>
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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 for Summary Judgment filed by David Schoonover ("Plaintiff"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the hearing on the Motion for Summary Judgment is continued to 11:00 p.m. on July 23, 2020.

## FINAL RULINGS

18. [20-22443-E-13](#) **MATTHEW/DIANNA PARKER** **OBJECTION TO CONFIRMATION OF**  
[DPC-1](#) **Julius Cherry** **PLAN BY DAVID CUSICK**  
**6-24-20 [15]**

**Final Ruling: No appearance at the July 14, 2020 Hearing is required.**  
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Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtors and Debtor's Attorney on June 24, 2020. 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.

**The hearing on the Objection to Confirmation of Plan is continued to 2:00 p.m.  
on August 11, 2020.**

The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that Debtor failed to provide proof of his social security number at the First Meeting of Creditors held on June 18, 2020.

### DISCUSSION

#### Failure to Provide Social Security Number

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

Trustee requests the court continue this hearing to August 11, 2020, after Debtor's continued meeting of creditors scheduled for July 23, 2020. This is not an unreasonable request. The court continues the hearing on this Objection to August 11, 2020.

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

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

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

**IT IS ORDERED** that the hearing on the Objection to Confirmation of the Plan is continued to 2:00 p.m. on August 11, 2020.

19.	<a href="#"><u>20-22375-E-13</u></a> <a href="#"><u>RAS-1</u></a>	<b>ANTHONY/THELMA BAUTISTA</b> <b>Jeanne Serrano</b>	<b>OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK NATIONAL ASSOCIATION</b> <b>5-29-20 <a href="#"><u>15</u></a></b>
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**Final Ruling:** No appearance at the July 14, 2020 hearing is required.

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U.S. Bank National Association ("Creditor") having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Objection to Confirmation of Plan was dismissed without prejudice, and the matter is removed from the calendar.**

**Final Ruling:** No appearance at the July 14, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 5, 2020. By the court's calculation, 39 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 Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtors, Lane and Denise Milde ("Debtors"), have provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on June 16, 2020. Dckt. 54. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

The Motion to Confirm the Chapter 13 Plan filed by the debtors, Lane and Denise Milde ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, and Debtor's Chapter 13 Plan filed on June 5, 2020, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the

21. [19-25097](#)-E-13      **DESIREE MORENO**      **MOTION TO MODIFY PLAN**  
[PSB-2](#)      **Paul Bains**      **5-26-20 [33]**

**Final Ruling: No appearance at the July 14, 2020 Hearing is required.**  
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Local Rule 9014-1(f)(1) Motion—No 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 26, 2020. By the court's calculation, 35 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 granted.**

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Desiree Moreno ("Debtor"), has filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response indicating non-opposition on June 24, 2020. Dckt. 39. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

#### **Trustee's Response**

Trustee filed a Response on June 24, 2020, Dckt. 39. Trustee does not oppose the terms of Debtor's modification of the Plan. Trustee notes Debtor's Supplemental Schedules I and J were filed as exhibits on May 26, 2020, Dckt. 36 and not identified as supplemental or amended schedules. Trustee further notes Debtor's Motion dated May 13, 2020 and Declaration dated May 22, 2020 reference the date May 26, 2020 as the date the modified Plan was filed, which is after the date the documents may have been signed. A difference in font between the text of the documents and the date may indicate the signature was added at a later date.

## Debtor's Response

Debtor filed a Response to Trustee's Response on June 25, 2020, Dckt. 41. Debtor asserts the Declaration was signed and dated on the date specified in the declaration. *Id.* at 1. Counsel retained a copy of the document. Debtor further argues the documents were signed with a "/s/," which indicates the Declaration was properly signed and dated. *Id.* Adding that the declaration was indeed signed and dated at the same time.

## DISCUSSION

Debtor has clarified discrepancy between the Motion's date, the Declaration's date and signature, and the Plan's filing date.

The Chapter 13 Plan complies with the requirements of 11 U.S.C. § 1322 and § 1325, the Motion is granted, and the Plan 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, Desiree Moreno ("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 May 26, 2020, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.