UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

August 1, 2017, at 3:00 p.m.

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1. **16-25610-E-13** **PAUL FERNANDES** **MOTION TO CONFIRM PLAN**
HLG-3 **Kristy Hernandez** **6-5-17 [94]**

Final Ruling: No appearance at the August 1, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 6, 2017. By the court's calculation, 56 days' notice was provided. 42 days' notice is required. FED. R. BANKR. P. 2002(b); LOCAL BANKR. R. 3015-1(d)(1).

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

The hearing on the Motion to Confirm the Amended Plan is continued to 3:00 p.m. on August 29, 2017.

Paul Fernandes ("Debtor") seeks confirmation of the Amended Plan because there was a change to his finances and because he proposes to pay Nationstar Mortgage LLC its pre-petition arrears in equal monthly payments. Dckt. 94. The Amended Plan proposes payments of $2,900.00 for eight months, followed by $5,629.00 for fifty-three months, plus a lumpsum of $10,000.00 in the second month. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an Opposition on June 29, 2017. Dckt. 105. The Trustee asserts that Debtor is $5,629.00 delinquent in plan payments, which represents one month of the $5,629.00 plan payment. According to the Trustee, the Plan in § 1.01 calls for payments to be received by the Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

The Trustee also argues that Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). The Trustee states that the Additional Provisions potentially require the Trustee to issue manual checks each month without good cause. He notes that the plan provisions require a monthly payment to unsecured claims, which requires the Trustee to calculate the monthly payment for each claim each month. The Trustee argues that Debtor has failed to specify what monthly amount each claim would receive, leaving it to the Trustee to determine. The provisions also call for a specific payment for the Trustee's fees, which contradicts 28 U.S.C. § 586(e). Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

CREDITOR'S OPPOSITION

Wells Fargo Bank, National Association, as Trustee for the Holders of the Banc of America Mortgage Backed Securities, Inc. Mortgage Pass-Through Certificates, Series 2004-E, its assignees and/or successors in interest ("Creditor" or "WFBNA") filed an Opposition on July 13, 2017. Dckt. 108. Creditor holds a senior lien against Debtor's real property located at 3136 Sceptre Drive, Rocklin, California. Creditor argues that it opposes a plan that will not pay arrears until confirmation. FN.1.

FN.1. The court finds this argument, that the Plan is objectionable because the required plan payments will not begin to paid until the Plan, providing for such payments, is confirmed to be "interesting." Possibly this is in the nature of a "motion" for adequate protection or relief from the stay, with WFBNA arguing that the cure payments on the arrearage cannot begin until the Plan is confirmed and for a year now Debtor has been unable to confirm a plan. The arrearage cure payments are being held by the Chapter 13 Trustee, and if the court is willing to grant relief from the stay, then a year into this case adequate protection requires an order authorizing such relief is proper.

But WFBNA has not filed such a motion requesting such relief. If it did, then such would be in a motion for relief from the stay, not in an opposition to motion to confirm–motion to dismiss–motion for relief from stay combined pleading. See Federal Rule of Bankruptcy Procedure 9014, which does not join the provisions of Federal Rule of Civil Procedure 18 and Federal Rule of Bankruptcy Procedure 18 allowing persons to join multiple claims for relief in one complaint.

Creditor does not believe that there will be a confirmable plan in this case and argues that delayed payments to it is equivalent to unfair treatment causing Creditor "to bear the inherent risk of default." *Id.* at 3:10–11.

Improper Additional Relief Requested

Buried in the "Opposition" is a separate request (read as a "motion") that the court dismiss this case for cause if the Chapter 13 Plan is not confirmed. The Motion before the court is confirmed of the Chapter 13 Plan, not a motion to dismiss. This request for relief by order of the court fails on several grounds. As WFBNA well knows, relief in the form of an order must be sought by motion (or "application" when specially authorized) from the court. FED. R. BANKR. P. 9013. Federal Rule of Bankruptcy Procedure 1017(f) requires that a request for dismissal of a Chapter 13 case "shall be on motion filed and served as required by Rule 9013." An "order" is not requested by burying it in one line in an opposition to someone else's motion.

A motion to dismiss must be served on all parties in interest. Federal Rule of Bankruptcy Procedure 1017(a) requires that the motion be served as provided in Federal Rule of Bankruptcy Procedure 2002, which governs motions served on all parties in interest. Here, the "motion" buried in the Opposition was merely served on Debtor, Debtor's counsel, the Chapter 13 Trustee, and the U.S. Trustee—not all parties in interest. This is clearly deficient, even if a "motion" to dismiss could be joined with and hidden in the Opposition.

Possibly the "confusion" in the relief requested in the Opposition arises from too many attorneys working on one file. Here, listed on the pleadings as the attorneys working on this matter are:

> LEE S. RAPHAEL, ESQUIRE, #180030
> CASSANDRA J. RICHEY, ESQUIRE #155721
> MELISSA VERMILLION, ESQUIRE #241354
> BONNI S. MANTOVANI, ESQUIRE, # 106353
> ANNA LANDA, ESQUIRE #276607
> DIANA TORRES-BRITO, ESQUIRE #163193

It may be this is a composite pleading in which each had an idea that was then rolled upon into one document by clerical staff.

DEBTOR'S REPLY

Debtor filed a Reply on July 24, 2017. Dckt. 110. Debtor asserts that he is no longer delinquent on plan payments.

RULING

Despite Debtor's contention that he is no longer delinquent, there are additional concerns that hinder confirmation of the proposed plan. At the root of this problem appears to be Debtor's overly detailed computation of the amounts to be paid, rather than allowing the Chapter 13 Trustee to properly disburse the monies as provided by the Plan. The court provided a detailed analysis of Debtor's economics in the Civil Minutes from the May 9, 2017 hearing on the prior motion to confirm a plan in this case. Dckt. 90. In discussing the Debtor-WFBNA "battle" in this case, the court stated:

> At the January 10, 2017, the court advised Debtor and Creditor to "take a hard look" at the financial situation in this case. Dckt. 57. Creditor seems locked into wanting to

> foreclose on Debtor's property, and Debtor seems locked into wanting to keep the property by pooling funds from family members. The parties do not appear to have determined what course of action is really in the best financial interest of each party.

Id. at 3. A problem with the prior plan was that it delayed the cure payment to be made on the WFBNA claim until month eight, which left $9,760.00 "lying around" to be disbursed on general unsecured claims ahead of beginning the cure payments to WFBNA. *Id.* at 4.

In those Civil Minutes, the court presented an analysis of why the delay in beginning payments to WFBNA was not reasonable. It may be that Debtor took those examples too literally and tried to specify the dollar amounts that were rounded estimates (such as for Trustee's fees) by the court.

It appears that the while the substance of what is provided has merit, the details need to be cleaned up with Debtor's counsel conferring with the Chapter 13 Trustee and counsel for WFBNA. In general terms, it appears that the Plan seeks to provides as follows:

A. Funding of Plan:

1. Aggregate Plan Payments For Months 1-8.....$33,000.00
2. Monthly Payments For Months 9-60.....$ 5,629.00

B. Disbursement of Plan Monies:

1. Chapter 13 Trustee Fees in Amount Specified by Law

2. Wells Fargo Bank, N.A.

   a. Current Monthly Mortgage Payment.....$2,303.83
   b. Monthly Arrearage Payment.....$2,498.16

3. General Unsecured Claims

   a. Remaining Monies After Above

For WFBNA, the arrearage amount stated under penalty of perjury in Proof of Claim No. 4 is $139,675.30. Spreading that over sixty months equals $2,327.92 in principal. The amount stated in the Plan is $170 per month higher, which will slightly accelerate the cure.

Using the time periods stated in the Plan, then WFBNA would received monthly payments of $2,498.16 for its arrearage cure, which totals $19,985.28. WFBNA would receive the current monthly mortgage payment of $2,303.83, which for eight months totals $18,430.64. These two amounts exceed the $33,200.00 with which the Plan was funded for the first eight months.

Estimating, and just ESTIMATING, Chapter 13 Trustee fees at 7%, for the $33,200.00 funded for the first eight months of the Plan, those would total $2,324.00. That would leave $30,876.00. The current

monthly post-petition mortgage payments total $18,430.64, which would then leave APPROXIMATELY $12,445.36 to be applied to the arrearage on the WFBNA claim.

If the APPROXIMATELY $12,445.36 is applied to the arrearage, then there would be approximately be $127,229.94 to be cured during the remaining 52 months of the plan. Based on the approximation of the Chapter 13 Trustee fees, for the remaining 52 months of the plan the arrearage cure monthly payment would be $2,446.73.

For months 9–60 of the Plan, the cash flow would be ESTIMATED to be as follows:

Plan Payment	$5,629.00
ESTIMATED Chapter 13 Trustee Fees (7%)	($ 394.03)
WFBNA Current Monthly Mortgage Payment	($2,303.83)
WFBNA Arrearage Cure	($2,446.73)
Monthly Net Monies For Trustee to Aggregate for Unsecured Claims Dividends	$ 484.41

At $484.41 per month over a period of 52 months, the Trustee will be able to aggregate $25,189.32 for distribution for the general unsecured claims. The Claims Register in this case lists approximately $16,856.00 in general unsecured claims filed.

Thus, it appears that the "defects" to be addressed are merely in structuring the plan to indicate the monthly amounts to be paid on claims, not to specify an amount of Chapter 13 Trustee's fees (which may differ from the amount legally chargeable for fees), and appear to require monthly payments to creditors on unsecured claims in amounts less than the minimum determined to be economically feasible by the Chapter 13 Trustee.

The court continues the hearing to allow counsel for Debtor to confer with counsel for the Chapter 13 Trustee to work out such language. Counsel for WFBNA may provide clarifying language to both counsel for Debtor and counsel for the Chapter 13 Trustee to ensure that based on the plan payments made during the first eights months of the plan are properly allocated to the WFBNA current monthly mortgage payment and to the arrearage payment.

In light of WFBNA jumbling an Opposition to the Motion, with a Motion to Dismiss, with a Motion for Adequate protection, the court is not inclined to order interim special relief to authorize the Chapter 13 Trustee to make a pre-confirmation disbursement of any monies that could reasonably be identified as intended to be applied to the arrearage if the plan is confirmed over the pending WFBNA opposition.

The hearing on the Motion to Confirm is continued to 3:00 p.m. on August 29, 2017. On or before August 15, 2017, Debtor shall file a supplemental pleading stating all of the proposed amendments to address the Chapter 13 Trustee's opposition and the opposition of Wells Fargo Bank, N.A. Additionally, on or before August 15, 2017, Wells Fargo Bank, N.A. shall file supplemental pleadings identifying for the court the legal statutory and rule basis for requesting the dismissal of a Chapter 13 case as part of an opposition to motion to confirm.

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

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

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

IT IS ORDERED that the hearing on the Motion to Confirm the Amended Plan is continued to 3:00 p.m. on August 29, 2017.

IT IS FURTHER ORDERED that on or before August 15, 2017,

A. Debtor shall file and serve on counsel for Wells Fargo Bank, N.A., the Chapter 13 Trustee, and the U.S. Trustee a supplemental pleadings stating any proposed amendments to the Chapter 13 Plan now before the court; and

B. Counsel for Wells Fargo Bank, N.A. shall file and serve on counsel for Debtor, the Chapter 13 Trustee, and U.S. Trustee a supplemental pleading identifying for the court the legal statutory and rule basis for requesting the dismissal of a Chapter 13 case as part of an opposition to motion to confirm. Counsel for Wells Fargo Bank, N.A., as identified on the Opposition to the Motion to Confirm which included a request to dismiss the case are:

LEE S. RAPHAEL, ESQUIRE, #180030
CASSANDRA J. RICHEY, ESQUIRE #155721
MELISSA VERMILLION, ESQUIRE #241354
BONNI S. MANTOVANI, ESQUIRE, # 106353
ANNA LANDA, ESQUIRE #276607
DIANA TORRES-BRITO, ESQUIRE #163193

2. **17-23517-E-13** **STACY TUCKER** **OBJECTION TO CONFIRMATION OF**
DPC-2 **Mary Ellen Terranella** **PLAN BY DAVID P. CUSICK**
7-3-17 [16]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on July 3, 2017. By the court's calculation, 29 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 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing ----------.

The Objection to Confirmation of Plan is sustained.

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the bases of:

A. Delinquency,

B. Failure to Attend First Meeting of Creditors,

A. Failure to File Tax Returns, and

B. Plan Exceeds Sixty Months.

The Trustee's objections are well-taken.

The Trustee asserts that Debtor is $1,390.00 delinquent in plan payments, which represents one month of the $1,390.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

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

The Trustee states that on June 21, 2017 the IRS filed Claim #2 indicating that Debtor has not filed tax returns during the four-year period preceding the fling of the Petition, specifically for the years 2016, 2015, 2014, and 2013. The Trustee further states the IRS reports no returns were filed for 2008, 2009, 2010, 2011, and 2012.

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Trustee, the Plan will complete in ninety-nine months due to a priority tax claim by the IRS of $26,692.89 filed on June 21, 2017. 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 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.

3. **12-31030-E-13** **JOSEPH/DORI AZZOLINO** **MOTION FOR HARDSHIP DISCHARGE**
MJG-2 **Matthew Gilbert** **6-19-17 [31]**

Final Ruling: No appearance at the August 1, 2017 hearing is required.

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

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on creditors and parties requesting special notice on June 19, 2017. By the court's calculation, 43 days' notice was provided. 28 days' notice is required. However, there is no documentation that this has been served on the U.S. Trustee, a party in interest.

The Motion for Hardship Discharge has not been properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The hearing on the Motion for Hardship Discharge is continued to 3:00 p.m. on August 29, 2017.

Joseph Azzolino and Dori Azzolino ("Debtor") move for the entry of a hardship discharge pursuant to 11 U.S.C. § 1328(b). Debtor pleads that income from self-employment has decreased significantly, decreasing from an average gross monthly income of $5,458.54 to a total gross income in 2017 of $12,354.32. Debtor pleads that his net business income this year is $4,835.46. Additionally, Debtor states that a tree fell through the roof of Debtor's house in June 2016, leading to a prolonged dispute with Debtor's insurance company and a contractor who performed repairs. Debtor argues that $7,500.00 in unexpected expenses were necessary after damage caused to the home and because of poor repairs.

Debtor pleads that the $1,008.00 monthly plan payment is no longer affordable, and because Debtor has completed fifty-six months of the plan, Debtor requests a hardship discharge. Debtor argues that there is no ability to afford a plan at this time, which negates proposing a modified plan. Finally, Debtor argues that the amount distributed to unsecured claims is not less than the amount that those claims would have received if the case had been administered under Chapter 7.

INSUFFICIENT SERVICE OF MOTION

Federal Rule of Bankruptcy Procedure 2002(k) establishes that notice must be transmitted to the United States Trustee for "any . . . matter if such notice is requested by the United States trustee or ordered by the court." The United States Trustee Guidelines for Region 17 specify in Section 1.1 that discharge

papers need to be served to the United States Trustee. The United States Trustee was not served with notice of this Motion (and neither was the Chapter 13 Trustee, although he responded).

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on July 7, 2017. Dckt. 40. The Trustee states that Debtor is currently in month sixty-one of the Plan and has paid $56,448.00. The Plan calls for $60,480.00. Debtor, then, is delinquent by $4,032.00.

The Trustee is not certain that a secured claim of Santander Consumer USA will be satisfied if the plan is not completed. *Id.* at 2: 8–11 (citing *HSBC Bank USA, N.A. v. Blendheim (In re Blendheim)*, 803 F.3d 477 (9th Cir. 2015)). That secured claim was filed for $34,244.44 and then valued at $3,650.00. The Trustee has paid $3,650.00 in principal and $567.60 in interest on the secured claim and has paid $11,695.18 toward the unsecured portion of the claim.

Also, the Trustee notes that Debtor has not explained how $7,500.00 in home repairs was afforded but $4,032.00 is now unaffordable.

APPLICABLE LAW

Section 1328(b) of the Bankruptcy Code states:

> Subject to subsection (d), at any time after the confirmation of the plan and after notice and a hearing, the court may grant a discharge to a debtor that has not completed payments under the plan only if–
>
> > (1) the debtor's failure to complete such payments is due to circumstances for which the debtor should not justly be held accountable;
> >
> > (2) the value, as of the effective date of the plan, of property actually distributed under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 of this title on such date; and
> >
> > (3) modification of the plan under section 1329 of this title is not practicable.

The provisions of 11 U.S.C. § 1328(b) are written conjunctively and must all be satisfied to grant a hardship discharge. *See, e.g.*, *In re Cummins*, 266 B.R. 852, 855 (Bankr. N.D. Iowa 2001). Debtor has the burden or proving each of those elements. *Spencer v. Labarge (In re Spencer)*, 301 B.R. 730, 733 (B.A.P. 8th Cir. 2003). "Unsubstantiated and conclusory statements" about a debtor's inability to afford plan payments anymore are insufficient when considering a motion for a hardship discharge. *See, e.g.*, *In re Dark*, 87 B.R. 497, 498 (Bankr. N.D. Ohio 1988).

Some courts have looked for a catastrophic event to justify a hardship discharge, but others have relied upon the plain meaning of 11 U.S.C. § 1328(b) to determine whether a "debtor is justly accountable for the plan's failure." *In re Bandilli*, 231 B.R. 836, 840 (B.A.P. 1st Cir. 1999). Determining whether a debtor is justly accountable is fact-driven, and some considerations include:

A. Whether the debtor has presented substantial evidence that he or she had the ability and intention to perform under the plan at the time of confirmation;

B. Whether the debtor did materially perform under the plan from the date of confirmation until the date of the intervening event or events;

C. Whether the intervening event or events were reasonably foreseeable at the time of confirmation of the Chapter 13 plan;

D. Whether the intervening event or events are expected to continue in the reasonably foreseeable future;

E. Whether the debtor had control, direct or indirect, of the intervening event or events; and

F. Whether the intervening event or events constituted a sufficient and proximate cause for the failure to make the required payments.

Id.

At least one court has found that an economic hardship (i.e., lost business revenue and increased expenses) is not the kind of event "such as death or disability which prevent[s] a debtor, through no fault of his or her own, from completing payments." *In re Nelson*, 135 B.R. 304, 306 (Bankr. N.D. Ill. 1991).

Sub-section 11 U.S.C. § 1328(b)(1) "requires that the circumstances leading to the debtor's failure to make payments be beyond the debtor's control." *In re Cummins*, 266 B.R. at 855. Such aggravating circumstances need to be "truly the worst of the awfuls—something more than just the temporary loss of a job or a temporary physical disability." *In re Nelson*, 135 B.R. at 307 (citation omitted).

The second portion of 11 U.S.C. § 1328(b) requires that unsecured claims receive no less than they would have through Chapter 7 liquidation. That is called the "best interests" test that is identical to Chapter 13 plan confirmation in 11 U.S.C. § 1325(a)(4). *In re Cummins*, 266 B.R. at 856 (citations omitted). If an unsecured claim would not receive a distribution through Chapter 7, then any payment from a Chapter 13 plan satisfies that requirement. *Id.* (citing *In re Nelson*, 135 B.R. at 308).

Finally, 11 U.S.C. § 1328(b)(3) requires that modifying the Chapter 13 plan not be practicable. Proposing a modified plan "is not 'practicable' if there is no source of income to fund the modified plan." *Id.* (citing *In re Bond*, 36 B.R. 49, 51 (Bankr. E.D.N.C. 1984)).

The Ninth Circuit has instructed that "[n]othing in the Code compels a bankruptcy court to close, rather than dismiss, a Chapter 13 case when a debtor fails to complete [a] plan." *HSBC Bank USA, N.A. v. Blendheim (In re Blendheim)*, 803 F.3d 477, 496 (9th Cir. 2015). Furthermore, "the availability of case closure does not eliminate a bankruptcy court's duty to ensure that a debtor complies with the Bankruptcy Code's 'best interests of creditors' test, 11 U.S.C. § 1325(a)(4), and the good faith requirement for confirming a Chapter 13 plan." *Id.* The Ninth Circuit found explicitly that a "bankruptcy court [had] properly conditioned permanent lien-voidance upon the successful completion of the Chapter 13 plan payments. If the debtor fails to complete the plan as promised, the bankruptcy court should either dismiss the case or, to the extent permitted under the Code, allow the debtor convert to another chapter." *Id.*

DISCUSSION

In the Memorandum of Points and Authorities, Debtor addresses the first element of 11 U.S.C. § 1328(b) by asserting two grounds. First, the Memorandum states that Debtor's gross monthly income over the last year and a half decreased to $2,470.86 per month, down from a prior average of $5,458.54 per month. Dckt. 33, at 2:6–10. Second, Debtor alleges that a "catastrophic loss" occurred when a tree fell through a roof in June 2016. *Id.*, at 2:11.5–12.5. Debtor claims to be "out-of-pocket" by $7,500.00, but Debtor also says that "homeowner's insurance is covering the damage to his home from the tree-fall." *Id.*, at 2:15.5 & 2:23.5–24.5. Debtor does not state explicitly what the $7,500.00 in expenses are, but Debtor may be indicating that they are related to "poor performance" by a contractor hired to conduct repairs. *Id.*, at 2:16–17. Without a clear explanation, Debtor has not met its high burden of proving that the economic woes in this case justify a hardship discharge.

For the second element, Debtor states in the Memorandum of Points and Authorities that unsecured claims have received $49,425.13, while the non-exempt property in this case has been valued at $49,364.00. *Id.*, at 3:3–5.

As to the third element, Debtor alleges that a modified plan has been considered, but Debtor asserts that Debtor's reduced income inhibits any ability to fund a plan.

For this Motion, there is an additional wrinkle to the three elements to show for a hardship discharge in that there is a lien voidance in play. If Debtor does not complete the Chapter 13 Plan (whether as it now exists or is modified) the issue exists whether the "contract" under the Chapter 13 Plan has been completed. It is not the discharge, but the completion of the "contract" of the Chapter 13 Plan that results in there being no debt left secured by the lien on Debtor's property. See *In re Frazier*, 448 B.R. 803 (Bankr. ED Cal. 2011), *affd.*, 469 B.R. 803 (ED Cal. 2012) (discussion of "lien striping" in Chapter 13 case) and *Martin v. CitiFinancial Services, Inc. (In re Martin)*, 491 B.R. 122 (Bankr. E.D. CA 2013).

While Debtor has provided an extensive discussion of cases of a debtor getting a discharge and debtors in other cases completing their plans and having liens rendered void based on an 11 U.S.C. § 506(a) valuation, Debtor does not address the situation where the plan is not completed, the "contract" between the parties is not fully performed, and the effect on the lien.

In fact, in the conclusion of the supplemental pleadings, Debtor makes the statement, "The Creditor's lien should be deemed satisfied and the plan deemed completed and subject to discharge under

1328(b)." Neither liens nor plan are "discharged." It is the completion of the plan that makes the "contract" as modified by the plan, which makes the § 506(a) valuation final, which then leaves there being no obligation to be secured by the lien. The numerous bankruptcy cases from the 1990's cited by Debtor for the apparent proposition that the mere § 506(a) valuation somehow "voids" the lien are not consistent with the law as it has developed in the appellate courts in the past twenty years.

That being said, it may well be that amendment of the plan to allow it to be completed may well be possible. Further, whether a hardship discharge or an amendment to the Plan, Debtor has not addressed how, with the precipitous drop in income and the $7,500.00 in roof repair expenses, Debtor was able to perform the plan 56 of the 60 months.

The court continues the hearing to allow Debtor to address: (1) the effect of an 11 U.S.C. § 506(a) valuation when a debtor fails to complete the plan (contract), which analysis shall focus on current bankruptcy court and appellate case law addressing the issue; (2) how Debtor was able to perform the plan for 56 months in light of the significant drop in income during the last 18 months of the Plan; and (3) whether a plan amendment that provides that a portion of the insurance recovery to reimburse Debtor for the out of pocket costs incurred, which appear to be at least in part the reason for the default in the final four months of the plan, is a reasonable sixtieth month amendment for which the delay in payment is caused by the processing of the claim by the insurance company.

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 Hardship Discharge having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearing on the Motion is continued to 3:00 p.m. on August 29, 2017.
>
> **IT IS FURTHER ORDERED** that Debtor shall file and serve on the Chapter 13 Trustee and U.S. Trustee on or before August 15, 2017, supplemental pleadings addressing: (1) the effect of an 11 U.S.C. § 506(a) valuation when a debtor fails to complete the plan (contract), which analysis shall focus on current bankruptcy court and appellate case law addressing the issue; (2) how Debtor was able to perform the plan for 56 months in light of the significant drop in income during the last 18 months of the Plan; and (3) whether a plan amendment which provides that a portion of the insurance recovery to reimburse Debtor for the out of pocket costs incurred, which appear to be at least in part the reason for the default in the final four months of the plan, is a reasonable sixtieth month amendment for which the delay in payment is caused by the processing of the claim by the insurance company. Replies, if any, shall be filed and served on or before August 22, 2017.

IT IS FURTHER ORDERED that on or before August 15, 2017, the Debtor shall document effective service on the U.S. Trustee, whether by USPS or electronic (citing the court to the rule or guideline which provides for electronic service in lieu of physical service). If new service is made, doing so before the August 15, 2017 date allows for at least 14 days service under Local Bankruptcy Rule 9014-1(f)(2).

4. 17-21730-E-13 MITCHELL LOGAN **MOTION TO CONFIRM PLAN**
LBG-2 Lucas Garcia **6-8-17 [55]**

DEBTOR DISMISSED: 06/22/2017

Final Ruling: No appearance at the August 1, 2017 hearing is required.

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

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

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

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

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

5. **17-23636-E-13** **RENE/STEFANIE PAEZ** **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK**
DPC-1 **Mohammad Mokarram** **7-6-17 [15]**

Final Ruling: No appearance at the August 1, 2017 hearing is required.

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

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

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

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

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

6. **17-22838-E-13** **LYUBOV ROMANOVICH** **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK**
DPC-1 **Pro Se** **6-21-17 [22]**

Final Ruling: No appearance at the August 1, 2017 hearing is required.

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

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

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

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

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

7. 12-36944-E-13 EDA URRIZA MOTION TO MODIFY PLAN
PLC-10 Peter Cianchetta 6-22-17 [149]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 22, 2017. By the court's calculation, 40 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(g) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is denied.

Eda Urriza ("Debtor") seeks confirmation of the Modified Plan because of unexpected changes to her finances. Dckt. 151. The Modified Plan proposes plan payments of $2,800.00 for eight months and then $4,419.54 for the remaining fifty-one months, with no less than a 37% dividend provided to unsecured claims (a dividend totaling $118,610.02). 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an Opposition on July 18, 2017. Dckt. 156. The Trustee asserts that Debtor is $2,519.54 delinquent in plan payments, which represents less than one month of the $4,419.54 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Debtor is in material default under the Plan because the Plan proposes less than the permitted sixty months. On Form B22C, Debtor indicated that the Modified Plan was for five years, however,

according to the Trustee, the Plan proposes payments for fifty-nine months. The Plan does not comply with the sixty-month requirement under 11 U.S.C. § 1322(d).

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

8. 17-23544-E-13 DPC-1 — JOE/CARRIE MATTHEWS — Mohammad Mokarram — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK — 7-3-17 [18]

Final Ruling: No appearance at the August 1, 2017 hearing is required.

Local Rule 9014-1(f)(2) Objection.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on July 3, 2017. By the court's calculation, 29 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 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

The Objection to Confirmation is overruled as moot.

The Trustee objects to confirmation of Debtor's Chapter 13 plan. Debtor filed a Notice of Conversion on July 25, 2017, however, converting the case to a proceeding under Chapter 7. Dckt. 32. Debtor may convert a Chapter 13 case to a Chapter 7 case at any time. 11 U.S.C. § 1307(a). The right is nearly absolute, and the conversion is automatic and immediate. FED. R. BANKR. P. 1017(f)(3); *In re Bullock*,

41 B.R. 637, 638 (Bankr. E.D. Penn. 1984); *In re McFadden*, 37 B.R. 520, 521 (Bankr. M.D. Penn. 1984). Debtor's case was converted to a proceeding under Chapter 7 by operation of law once the Notice of Conversion was filed on July 25, 2017. *McFadden*, 37 B.R. at 521.

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

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

9. 17-23544-E-13 JHW-1 — JOE/CARRIE MATTHEWS — Mohammad Mokarram — OBJECTION TO CONFIRMATION OF PLAN BY TD AUTO FINANCE, LLC 6-28-17 [14]

Final Ruling: No appearance at the August 1, 2017 hearing is required.

Local Rule 9014-1(f)(2) Objection.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on June 28, 2017. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation is overruled as moot.

Creditor objects to confirmation of Debtor's Chapter 13 plan. Debtor filed a Notice of Conversion on July 25, 2017, however, converting the case to a proceeding under Chapter 7. Dckt. 32. Debtor may convert a Chapter 13 case to a Chapter 7 case at any time. 11 U.S.C. § 1307(a). The right is nearly absolute, and the conversion is automatic and immediate. FED. R. BANKR. P. 1017(f)(3); *In re Bullock*, 41 B.R. 637, 638 (Bankr. E.D. Penn. 1984); *In re McFadden*, 37 B.R. 520, 521 (Bankr. M.D. Penn. 1984). Debtor's case was converted to a proceeding under Chapter 7 by operation of law once the Notice of Conversion was filed on July 25, 2017. *McFadden*, 37 B.R. at 521.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Confirmation filed by Creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is overruled as moot.

10. **17-23354-E-13** **CHIA CHOU** **OBJECTION TO CONFIRMATION OF PLAN BY NATIONSTAR MORTGAGE, LLC**
AP-1 **Peter Macaluso** **7-6-17 [42]**

Final Ruling: No appearance at the August 1, 2017 hearing is required.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Confirmation having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is overruled as moot, the case having been dismissed.

11. **17-23354-E-13** **CHIA CHOU** **OBJECTION TO CONFIRMATION OF**
DPC-1 **Peter Macaluso** **PLAN BY DAVID P. CUSICK**
7-5-17 [24]

Final Ruling: No appearance at the August 1, 2017 hearing is required.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Confirmation having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is overruled as moot, the case having been dismissed.

12. 13-31957-E-13 WILLIAM ADAMS MOTION TO MODIFY PLAN
DBL-2 Bruce Dwiggins 6-19-17 [35]

Final Ruling: No appearance at the August 1, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on June 19, 2017. By the court's calculation, 43 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(g) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Debtor has filed evidence in support of confirmation. The Chapter 13 Trustee filed a Response indicating non-opposition on July 7, 2017. Dckt. 40. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by 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 June 6, 2017, is confirmed. Debtor's Counsel 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.

13. 11-49364-E-13 SNM-3 — ALLEN/MARCI FOX — Stephen Murphy — MOTION TO AMEND — 6-29-17 [63]

Final Ruling: No appearance at the August 1, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 29, 2017. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

The Motion for Leave to Amend 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 for Leave to Amend is granted.

The Motion for Leave to Amend the Motion to Value filed by Allen Fox and Marci Fox ("Debtor") to value the secured claim of The Bank of New York Mellon, as Trustee for the Benefit of the Certificate Holders and the Certificate Insurer for Flagstar Asset Backed Pass Through Certificates Series 2007-1, Its Successors and/or Assigns ("Creditor") filed on December 22, 2011, is accompanied by Debtor's Attorney's declaration. Debtor is the owner of the subject real property commonly known as 836 Granada Lane, Vacaville, California ("Property").

Debtor seeks to amend a Motion to Value that was filed on December 22, 2011, and granted by the court on January 24, 2012. Dckt. 19. Debtor asserts that the pleadings for the original Motion to Value do not include the document recording numbers and property APN. Now, Debtor seeks to amend the original pleadings, and necessarily, the court's subsequent order to include those identifying numbers.

DISCUSSION

At the January 24, 2012 hearing, the court granted Debtors Motion to Value and valued the Property at $280,600.00, noted that the first deed of trust secured a loan with a balance of approximately $452,386.00, and valued Creditors claim (secured by a second deed of trust) at $0.00. Dckt. 19. The court did not need document recording numbers and the Property's APN to perform those functions under 11 U.S.C. § 506(a).

What Debtor seeks from the court is permission to amend Debtor's Motion to Value, filed on December 22, 2011. Dckt. 8. In contested matters, Federal Rule of Bankruptcy Procedure 9014(c) incorporates various rules governing adversary proceedings. Bankruptcy Rule 7015 applies Federal Rule of Civil Procedure 15 to adversary proceedings and establishes how parties and amend and supplement pleadings. Bankruptcy Rule 9014 does not incorporate Bankruptcy Rule 7015 into contested matters, however. Nevertheless, Bankruptcy Rule 9014 states that "[t]he court may at any stage in a particular matter direct that one or more of the other rules in Part VII shall apply." Therefore, the court has authority to apply Bankruptcy Rule 7015 to this matter to allow Debtor to amend pleadings.

Debtor asserts that the document recording numbers and property APN are necessary to record documents in the official records of the County of Solano. Dckt. 63, at 3:2–3. Even though the court does not need that information to value a creditor's claim, the court has been presented with sufficient information to justify amending its prior order to include the requested information. 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 for leave to Amend or Supplement the Pleading filed by Allen Fox and Marci Fox ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and the claim of The Bank of New York Mellon, as Trustee for the Benefit of the Certificate Holders and the Certificate Insurer for Flagstar Asset Backed Pass Through Certificates Series 2007-1, Its Successors and/or Assigns ("Creditor") secured by a second deed of trust is identified as recording number 200700033097 against real property commonly known as 836 Granada Lane, Vacaville, California, with APN 0124-041-010.

14. **17-23164-E-13** **JOSE/MARIA ACEVEDO** **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK**
DPC-1 **Dale Orthner** **6-21-17 [22]**

Final Ruling: No appearance at the August 1, 2017 hearing is required.

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

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

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

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

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

15. **17-23164-E-13** **JOSE/MARIA ACEVEDO** **MOTION FOR DENIAL OF DISCHARGE OF BOTH DEBTORS UNDER 11 U.S.C. SECTION 727(A)**
DPC-2 **Dale Orthner** **6-21-17 [26]**

Final Ruling: No appearance at the August 1, 2017 hearing is required.

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

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

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

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

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

16. 17-23464-E-13 JOSEPHINE MELONE
DPC-1 Mary Ellen Terranella

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
6-28-17 [40]

Final Ruling: No appearance at the August 1, 2017 hearing is required.

Local Rule 9014-1(f)(2) Objection.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on June 28, 2017. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

The hearing on the Objection to Confirmation of Plan is continued to 3:00 pm on August 29, 2017.

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that:

A. The ability of Debtor to afford or make the payments of the proposed plan is dependent upon Debtor's Motion to Value the secured claim of Franklin Credit Management Corporation's Second Deed of Trust. This Motion to Value Collateral has been continued from June 27, 2017, to August 15, 2017.

The Creditor's objections are well-taken.

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of Franklin Credit Management Corporation. While Debtor has filed a Motion to Value the Secured Claim of Franklin Credit Management Corporation, the matter has been continued from June 27, 2017, to August 15, 2017. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6). Resolution of this Objection relies entirely upon the outcome of Debtor's Motion to Value. Therefore, the hearing on this Objection is continued to 3:00 p.m. on August 15, 2017.

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

IT IS ORDERED that the hearing on the Objection to Confirmation of the Plan is continued to 3:00 p.m. on August 29, 2017.

17. 17-23464-E-13 EAT-1 | **JOSEPHINE MELONE** **Mary Ellen Terranella** | **OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A. 6-9-17 [22]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on June 9, 2017. By the court's calculation, 53 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 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing ----------.

The Objection to Confirmation of Plan is sustained.

Wells Fargo Bank, N.A., Creditor with a secured claim, opposes confirmation of the Plan on the basis that the Plan does not cure its pre-petition arrears.

Creditor's objection is well-taken. The objecting creditor allegedly holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts $42,181.51 in pre-petition arrearages. The Plan does not propose to cure those arrearages. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearages.

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 a creditor with a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

18. **17-23273-E-13** **RUTH/ROSCO RIGSBY** **OBJECTION TO CONFIRMATION OF**
DPC-1 **Harry Roth** **PLAN BY DAVID P. CUSICK**
6-21-17 [24]

Final Ruling: No appearance at the August 1, 2017 hearing is required.

Local Rule 9014-1(f)(2) Objection.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on June 21, 2017. By the court's calculation, 41 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 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

The Objection to Confirmation of Plan is sustained.

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that:

A. Debtor failed to file income tax returns for 2014;

B. The Plan will complete in 135 months, exceeding the maximum sixty-month period; and

C. The Plan relies on pending motions to value, which motion is set for hearing on August 1, 2017.

The Trustee's objections are well-taken. Debtor has failed to file federal income taxes for the 2014 tax year. Debtor is required to file all of tax returns due during the four-year period preceding the filing of the bankruptcy petition by the time of the first meeting of creditors. *See* 11 U.S.C. §§ 1308 &1325(a)(9).

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Trustee, the Plan will complete in 135 months based on Debtor's proposed monthly plan payment of $300.00. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of Aaron's TV and Capital One Auto, which is set for hearing on August 1, 2017. The court has issued a final ruling granting that motion.

Debtor subsequently filed an Amended Plan on June 21, 2017, which is a *de facto* dismissal of the plan at issue.

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 having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, Debtor having subsequently filed an Amended Plan, 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.

19. **17-23273-E-13** **RUTH/ROSCO RIGSBY** **OBJECTION TO DISCHARGE BY**
DPC-2 **Harry Roth** **DAVID P. CUSICK**
6-21-17 [28]

Final Ruling: No appearance at the August 1, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on June 21, 2017. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

The Objection to Discharge has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4004(a). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Objection to Discharge is sustained.

David Cusick, the Chapter 13 Trustee ("Objector"), filed the instant Objection to Debtor's Discharge on June 21, 2017. Dckt. 28.

Objector argues that Ruth Rigsby and Rosco Rigsby ("Debtor") are not entitled to a discharge in the instant bankruptcy case because Debtor previously received a discharge in a Chapter 7 case.

Debtor filed a Chapter 7 bankruptcy case on November 30, 2016. Case No. 16-27922. Debtor received a discharge on March 6, 2017. Case No. 16-27922, Dckt. 18.

The instant case was filed under Chapter 13 on May 14, 2017.

11 U.S.C. § 1328(f) provides that a court shall not grant a discharge if a debtor has received a discharge "in a case filed under chapter 7, 11, or 12 of this title during the 4-year period preceding the date of the order for relief under this chapter." 11 U.S.C. § 1328(f)(1).

Here, Debtor received a discharge under 11 U.S.C. § 727 on March 6, 2017, which is less than four years preceding the date of the filing of the instant case. Case No. 16-27922, Dckt. 18. Therefore, pursuant to 11 U.S.C. § 1328(f)(1), Debtor is not eligible for a discharge in the instant case.

Therefore, the Objection is sustained. Upon successful completion of the instant case (Case No. 17-23273), the case shall be closed without the entry of a discharge, and Debtor shall receive no discharge in the instant case.

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 Discharge filed by David Cusick, the Chapter 13 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 Objection to Discharge is sustained, and upon successful completion of the instant case, Case No. 17-23273, the case shall be closed without the entry of a discharge.

20. 17-23273-E-13 HDR-1 | **RUTH/ROSCO RIGSBY** **Harry Roth** | **MOTION TO VALUE COLLATERAL OF CAPITAL ONE AUTO FINANCE 6-16-17 [14]**

Final Ruling: No appearance at the August 1, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on June 16, 2017. By the court's calculation, 46 days' notice was provided. 28 days' notice is required.

The Motion to Value 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 Secured Claim of Capital One Auto Finance ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $6,000.00.

The Motion filed by Ruth Rigsby and Rosco Rigsby ("Debtor") to value the secured claim of Capital One Auto Finance ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2012 Dodge Journey ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $6,000.00 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).

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee ("Trustee"), filed a Response on July 18, 2017. Dckt. 45. The Trustee does not state opposition to the instant Motion. He notes that Creditor is included in Class 2B with an amount claimed of $20,915.00. He notes that Creditor has not filed a claim in this case.

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred during October 2012, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $20,915.00. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of $6,000.00, 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 Secured Claim filed by Ruth Rigsby and Rosco Rigsby ("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 Capital One Auto Finance ("Creditor") secured by an asset described as 2012 Dodge Journey ("Vehicle") is determined to be a secured claim in the amount of $6,000.00, 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 $6,000.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

21. **17-23273-E-13** **RUTH/ROSCO RIGSBY** **MOTION TO VALUE COLLATERAL OF**
HDR-2 **Harry Roth** **SIRI FINANCIALS, LLC**
6-16-17 [19]

Final Ruling: No appearance at the August 1, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on June 16, 2017. By the court's calculation, 46 days' notice was provided. 28 days' notice is required.

The Motion to Value 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 Secured Claim of Siri Financials LLC ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $250.00.

The Motion filed by Ruth Rigsby and Rosco Rigsby ("Debtor") to value the secured claim of Siri Financials LLC dba Aaron's ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a Phillips 3D Blu Ray Player and a 55" Samsung Smart TV ("Property"). Debtor seeks to value the Property at a replacement value of $250.00 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).

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee ("Trustee"), filed a Response on July 18, 2017. Dckt. 42. The Trustee does not state opposition to the instant Motion. He notes that Creditor is included in Class 2B with an amount claimed of $1,000.00. He notes that Creditor has not filed a claim in this case.

DISCUSSION

The lien on the Property secures a purchase-money loan incurred on January 4, 2016, which is more than one year prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $1,000.00. Therefore, Creditor's claim secured by a lien against the Property is under-collateralized. Creditor's secured claim is determined to be in the amount of $250.00, 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 Secured Claim filed by Ruth Rigsby and Rosco Rigsby ("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 Siri Financials LLC ("Creditor") secured by an asset described as Phillips 3D Blu Ray Player and a 55" Samsung Smart TV ("Property") is determined to be a secured claim in the amount of $250.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $250.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

22. 17-24074-E-13 SDH-1 | **LARRY/LINDA HERRERA** | **MOTION TO VALUE COLLATERAL OF GOLDEN 1 CREDIT UNION**
Scott Hughes | **6-21-17 [8]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on June 21, 2017. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Secured Claim of Golden 1 Credit Union ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $7,500.00.

The Motion filed by Larry Herrera and Linda Herrera ("Debtor") to value the secured claim of Golden 1 Credit Union ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2012 Nissan Rogue ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $6,395.00 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).

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on July 18, 2017. Dckt. 20. The Trustee notes that there is no information provided about the Vehicle's style, condition, options, or needed repairs. He also notes that the Plan includes Creditor in Class 2B with a 4.5% interest rate and a monthly dividend of $119.22.

The Trustee notes that Creditor filed a claim on June 29, 2017 (Claim No. 1), for $9,883.01. When reviewing the Retail Installment Sale Contract, the Trustee notes that it labels the Vehicle as a 2012 Nissan Quest, not a Rogue.

DEBTOR'S ATTORNEY'S SUPPLEMENTAL DECLARATION

Debtor's Attorney filed a Supplemental Declaration on July 25, 2017. Dckt. 23. He reports that he spoke by telephone with Creditor regarding the Motion and states that they have agreed to value the Vehicle at $7,500.00. Debtor's Attorney states that he agreed to appear at the hearing and request that the Motion be granted at a valuation of $7,500.00, rather than file a separate stipulation for the court to consider.

Debtor's Attorney also reports that he appeared at the Meeting of Creditors with Debtor on July 20, 2017, and he states that Debtor clarified to the Trustee that the Vehicle is a Nissan Rogue, not a Nissan Quest. Debtor's Attorney believes that any reference to a Nissan Quest is a typographical error.

Debtor's Attorney requests that the Motion be granted, that the Vehicle be valued at $7,500.00, and that Creditor's secured claim be valued at $7,500.00.

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on February 5, 2013, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $9,883.01. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Debtor's Attorney reports that the parties have agreed to a valuation of $7,500.00. The court notes that Creditor has not amended its Proof of Claim. **At the hearing, Creditor agreed to a valuation of $7,500.00.**

Creditor's secured claim is determined to be in the amount of $7,500.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Value Secured Claim filed by Larry Herrera and Linda Herrera ("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 Golden 1 Credit Union ("Creditor") secured by an asset described as 2012 Nissan Rogue ("Vehicle") is determined to be a secured claim in the amount of $7,500.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $7,500.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

23. **17-23176-E-13** **LETICIA TOPETE** **OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS**
DPC-2 **Pro Se**
6-28-17 [31]

Final Ruling: No appearance at the August 1, 2017 hearing is required.

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

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

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

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

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

24. **17-23382-E-13** **SASBIR KUAR** **OBJECTION TO CONFIRMATION OF PLAN BY PINGORA LOAN SERVICING, LLC**
RCO-1 **Mikalah Liviakis** **6-27-17 [14]**

Final Ruling: No appearance at the August 1, 2017 hearing is required.

Local Rule 9014-1(f)(2) Objection.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on June 27, 2017. By the court's calculation, 35 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 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

As set forth in this ruling, the failure of Objecting Creditor to provide evidence in support of its opposition grounds (amount of arrearage), the court disposes of this Objection without hearing.

The Objection to Confirmation of Plan is overruled.

Pingora Loan Servicing, LLC, Creditor with a secured claim, opposes confirmation of the Plan on the basis that:

A. The Plan fails to cure pre-petition arrears;

B. Debtor cannot afford plan payments; and

C. A plan may not modify the rights of a holder of a claim secured only by an interest in real property that is Debtor's personal residence.

Creditor's objections are well-taken. The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has not filed a timely proof of claim, even though it asserts $22,136.48 in pre-petition arrearages.

While Objecting Creditor has provided an objection in support of this Objection, the declarant fails to provide any testimony about the debt and any arrearage. It appears that Diane Murphy, the knowledgeable employee of Objecting Creditor is not knowledgeable about the obligation and is unable to provide any testimony as to the obligation. Objecting Creditor's witness' testimony as to what the plan provides is of little benefit to the court. All Ms. Murphy is able to testify to is that:

1. I have read the foregoing and pages attached, and declare that the statements made therein are true of my own knowledge, or are based upon business records of the Creditor kept in the ordinary course of Creditor's business by persons whose duty it is to accurately record same at or near the time of the events recorded.

2. Creditor currently holds a first Deed of Trust on the Debtor's property commonly known as: 3260 TORRANCE AVE SACRAMENTO, CA 95S22 ("Property"). Attached hereto as Exhibit "A" is a copy of the Note and Deed of Trust and incorporated herein by reference.

3. Debtor's Chapter 13 Plan fails to cure the pre-petition arrears due to Creditor.

Declaration; Dckt. 15. These limited personal findings of fact or conclusions of law by Ms. Murphy do not provide the court with facts to support the conclusion of an arrearage. Apparently, Objecting Creditor has no better witness or an employ who could testify as to what is owed on the claim.

Given that Objecting Creditor's counsel regularly appears in this court and knows that the court applies the Federal Rules of Civil Procedure, Federal Rules of Bankruptcy Procedure, and Federal Rules of Evidence, the court concludes that Ms. Murphy's testimony is the best personal knowledge testimony she could provide. FED. R. EVID. 401, 402.

Objecting Creditor failing to provide evidence in support of the Opposition, the court overrules the Objection.

Possible Pyrrhic Victory for Debtor and Debtor's Counsel

The rejection of this objection may be but a Pyrrhic victory for Debtor. If this asserted creditor is correct and an unprovided for arrearage exists, the court can envision shortly seeing a motion for relief from the stay. As provided in the Chapter 13 Plan, the amount of the arrearage stated in the proof of claim or order of the court controls as to the secured claim provided for in the Plan. Chapter 13 Plan ¶ 2.04, Dckt. 5. At that point, Debtor and counsel would have to prepare a modified plan, motion to confirm modified plan, evidence to support the modified plan, notice a hearing, and conduct a hearing on the proposed modified plan. Any such proceedings because of the unprovided for cure of the arrearage would be clearly anticipated work to be covered by the no-look fee and likely not be reasonable additional costs and expenses if counsel has chosen to opt out of the no-look fee.

Alternatively, it may be that under the Chapter 13 Plan there may be adequate monies to pay the slightly higher amount of the arrearage alleged by Objecting Creditor's attorney (for which there is no evidence to support such argument by Creditor's attorney) without modification of the Plan. Only time will tell.

Objecting Creditor's Counsel make the argument that merely because the proposed Plan states an arrearage amount which is less than the amount argued by such Counsel, it "modifies" Objecting Creditor's obligation. Such argument ignores the express terms of the Chapter 13 Plan which provides that the proof of claim or order, if any, control as to the amount of Objecting Creditor's claim. This contention is without merit. Given that the court has explained this to attorneys in the law firm representing Objecting Creditor, it appears

that the Objection may be a form or template objection used in multiple jurisdiction without regard to the actual facts and law of the plan and claim before the court.

Finally, the only significant claim provided for in the Plan is that of this objecting creditor. The difference in the amount stated in the plan and argued by Objecting Creditor's Counsel (without evidence to support such argument) is "only" $4,000, which spread over sixty months of a plan is $66.66 per month. Looking at Schedule J, while Debtor's expenses are not excessive, they can be nipped and tucked to squeeze out the additional $66.66 per month if necessary.

The Objection is overruled.

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

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

The Objection to the Chapter 13 Plan filed by a creditor with a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Confirmation of the Plan is overruled, and the proposed Chapter 13 Plan is confirmed.

25. 17-23283-E-13 APN-1 | **KATHLEEN HEDICKE**
Ronald Holland | **OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A.**
6-29-17 [26]

Final Ruling: No appearance at the August 1, 2017 hearing is required.

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

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

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

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

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

26. **17-23283-E-13** **KATHLEEN HEDICKE** **OBJECTION TO CONFIRMATION OF**
DPC-1 **Ronald Holland** **PLAN BY DAVID P. CUSICK**
6-28-17 [18]

Final Ruling: No appearance at the August 1, 2017 hearing is required.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Confirmation having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is overruled as moot, the case having been dismissed.

27. **17-24488-E-13** **JANELLE GILMORE** **MOTION TO EXTEND AUTOMATIC STAY**
PGM-1 **Peter Macaluso**
7-18-17 [14]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on July 18, 2017. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The Motion to Extend the Automatic Stay is granted.

Janelle Gilmore ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 13-31632) was dismissed on March 20, 2017, after Debtor failed to make plan payments. *See* Order, Bankr. E.D. Cal. No. 13-31632, Dckt. 189, March 20, 2017. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because she was receiving less in wages and was not receiving child support payments on a regular basis. Dckt. 16, at 2:19–23. Additionally, Debtor reports that she has received two promotions at work since the last case and that she has a roommate who assists with rent and bills. *Id.*, at 2:24–27.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on July 24, 2017. Dckt. 21. The Trustee states that he does not oppose the Motion. He notes that the prior case included a plan with a higher plan payment, was dismissed after debtor lost a roommate and had her rent raised and had her purse stolen with a plan payment inside it.

DISCUSSION

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

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

A. Why was the previous plan filed?

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

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

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

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

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

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

The Motion to Extend the Automatic Stay filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes and parties, unless terminated by operation of law or further order of this court.

28. **17-23592-E-13** **GONZALO RUBANG** **OBJECTION TO CONFIRMATION OF**
DPC-2 **Richard Jare** **PLAN BY DAVID P. CUSICK**
7-3-17 [18]

Final Ruling: No appearance at the August 1, 2017 hearing is required.

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

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

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

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

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

29. 17-23093-E-13 BRL-1 | **ROBERT CLIFF, Scott Hughes** | **OBJECTION TO CONFIRMATION OF PLAN BY PENSCO TRUST COMPANY 6-19-17 [32]**

Final Ruling: No appearance at the August 1, 2017 hearing is required.

Local Rule 9014-1(f)(2) Objection.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on June 19, 2017. By the court's calculation, 43 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 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

The hearing on the Objection to Confirmation of Plan is continued to 3:00 p.m. on August 29, 2017. On or before August 15, 2017 Debtor shall file Opposition to this Objection, which shall include the information of the real estate broker who has been hired, confirmation that the property is listed for sale, the listing price, and how the property is being marketed.

PENSCO Trust Company Custodian FBO April Y. Bisgaard IRA BI1AF, PENSCO Trust Company Custodian FBO Harry Abrahams SEP IRA #AB1AM, PENSCO Trust Company Custodian FBO Continental West Sales Co., Inc. Defined Benefit Plan #WE1DM, Harry Abrahams, successor trustee of the Pauline Abrahams Trust, Under Declaration of Trust dated August 23, 1999, Creditor with a secured claim, opposes confirmation of the Plan on the basis that the Plan does not require any dividend to pay arrearages to Creditor. Creditor argues that such failure is an improper modification of a secured claim secured only by Debtor's residence.

DEBTOR'S RESPONSE

Robert Cliff, Jr., ("Debtor") filed a Response on July 14, 2017. Dckt. 44. Debtor argues that the Plan provides for regular monthly mortgage payments to Creditor with the arrears to be paid from sale proceeds, estimating that the property will be sold within one year. Debtor cites legal authority for the proposition that "curing of a default might be allowed if done within a reasonable time and while making ongoing payments." *Id.* at 2 (citing *In re Gavia*, 24 B.R. 216, 218 (Bankr. E.D. Cal. 1982), *aff'd*, 24 B.R. 573 (B.A.P. 9th Cir. 1982)).

Debtor states that he intends to seek court approval for employment of Diane Langston, a broker, soon and that he intends to sell and move out of the property by October 2017. Debtor reasserts that the Plan pays a 100% dividend to unsecured claims still.

DISCUSSION

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 $24,271.57 in pre-petition arrearages. The Plan proposes to cure those arrearages through the sale of Debtor's residence. Dckt. 5, § 6.05. Additionally, Creditor's claim is being paid through the Plan. *Id.* at § 6.02. If the property is not sold by May 5, 2018, then Debtor proposes surrendering it to Creditor. *Id.* at § 6.03. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the immediate surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). Creditor may not enjoy waiting for a speculative sale to occur, but the court is inclined to allow Debtor to attempt to sell the property and pay Creditor's claim from the sales proceed—so long as Debtor is actively pursuing such a sale.

However, notwithstanding Debtor having been in this bankruptcy case for eighty-seven days and the proposed Chapter 13 Plan being built around a commercially reasonable sale of the property, Debtor only got around to filing a motion to employ a real estate broker on July 28, 2017. This appears to being merely a last-minute reflex action to the Objection to Confirmation. It may be that this broker is not actively marketing the property for sale.

This is not Debtor's first recent case. His prior Chapter 13 case that was filed on November 20, 2015, was dismissed on March 30, 2017. Bankr. E.D. Cal. 15-29002. That case was dismissed due to Debtor's defaults in the Plan payments he was obligated to make under the confirmed Chapter 13 Plan in that case. 15-29002; Civil Minutes, Dckt. 58.

On Schedule A/B, Debtor lists his residence (the only real property listed) as having a value of $284,000.00. Dckt. 1 at 11. On Schedule D, Debtor states that debts totaling approximately $215,000.00. Assuming a normal residential real estate commission and costs of sale (estimated to be 8% of the gross sales price), a sale of the property would net (without further accruing interest on the claims, including real property taxes) would be $46,738.00 for the Debtor and estate, but, it requires that there be such a sale.

The court continues the hearing to afford Debtor time to file an opposition and convince both the court and the Objecting Creditor that there will be a good faith, commercially reasonable marketing of the property, not merely a delay in addressing the cure for a year, and then a request for further time for Debtor to recover the "equity" that "protects" Objecting Creditor's claim.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by a creditor with a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Objection to Confirmation of Plan is continued to 3:00 p.m. on August 29, 2017. On or before August 15, 2017 Debtor shall file and serve Supplemental Opposition to this Objection, which shall include the information of the real estate broker who has been hired, confirmation that the property is listed for sale, the listing price, and how the property is being marketed. Objection is overruled. Replies, if any, to the Opposition shall be filed and served on or before August 22, 2017.

30. 17-23093-E-13 DPC-1 | **ROBERT CLIFF** **Scott Hughes** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **6-20-17 [33]**

Final Ruling: No appearance at the August 1, 2017 hearing is required.

Local Rule 9014-1(f)(2) Objection.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on June 20, 2017. By the court's calculation, 42 days' notice was provided. 14 days' notice is required.

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

The hearing on the Objection to Confirmation of Plan is continued to 3:00 p.m. on August 29, 2017.

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that:

A. The Trustee cannot determine when plan payments will change according to the Additional Provisions;

B. The Additional Provisions list conflicting dates for when a sale of property must occur;

C. The Plan all but anticipates a modification later; and

D. The Plan proposes insufficient payments of $1,686.00 to cover debts of $1,742.00.

DEBTOR'S RESPONSE

Robert Cliff ("Debtor") filed a Response on July 14, 2017. Dckt. 42. Debtor asserts that his property is to be sold by May 5, 2018. Debtor also acknowledges that the Plan will most likely have to be modified either upon sale or surrender of his residence. Debtor also agrees that plan payments should be $1,742.00 per month, and he reports that he has made the first payment in that amount already.

DISCUSSION

The court has continued the hearing on the Objection to Confirmation for the creditor whose arrearage payment is to be delayed. The court has done this to afford Debtor the opportunity to file Supplemental Opposition that would convince the court, and presumably the Objecting Creditor, that the property is being marketed in a commercially reasonable manner. The court continues the hearing on this objection so that it may be addressed at the same time as the Objection filed by said Creditor.

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 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 Plan is continued to 3:00 p.m. on August 29, 2017.

31.	**17-24293-E-13 MRL-1**	**JOHN RUBALCADA AND LISA RODRIGUEZ Mikalah Liviakis**	**MOTION TO VALUE COLLATERAL OF WELLS FARGO BANK, N.A. 7-14-17 [15]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on July 14, 2017. By the court's calculation, 18 days' notice was provided. 14 days' notice is required.

The Motion to Value Secured Claim was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the 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 Secured Claim of Wells Fargo Bank, N.A. ("Creditor") is granted, and the secured claim of Wells Fargo Bank, N.A. is determined to be $3,500.00.

The Motion filed by John Rubalcada and Lisa Rodriguez ("Debtor") to value the secured claim of Wells Fargo Bank, N.A. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2005 Ford Freestyle ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $3,500.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on July 18, 2017. Dckt. 19. The Trustee notes that Debtor has not indicated the style of the Vehicle (e.g., Limited, Limited AWD, SE, SE AWD, SEL, or SEL AWD). He also notes that Creditor has not filed a claim in this case.

Additionally, the Trustee notes that the Plan lists "Wfds" in Class 2 of the Plan. That same "Wfds" is listed on Schedule D, too. The Trustee assumes that the abbreviation "Wfds" stands for "Wells Fargo Dealer Services," which is a corporation that merged into Creditor on June 28, 2011, according to the California Secretary of State.

DISCUSSION

Allegedly, the lien on the Vehicle's title secures a purchase-money loan that was incurred more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $6,907.00. Debtor provides his testimony as to the debt, lien, and that the lien was granted more than 910 days prior to the commencement of the bankruptcy case.

Therefore, based on the foregoing, creditor's secured claim is determined to be in the amount of $3,500. *See* 11 U.S.C. § 506(a). The remaining debt is determined to be a general unsecured claim . The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted. FN.1.

FN.1. While the Trustee's points concerning the vagaries of the description of the Vehicle are valid, in light of the age and modest value of the Vehicle, the court does not put Debtor and Debtor's counsel through the test of "getting it right." To the extent that an issue arises from such vagaries, it is Debtor and counsel who bear the risk.

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 Valuation of Collateral filed by John Albert Rubalcada and Lisa Valerie Rodriguez ("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 Wells Fargo Bank, N.A. ("Creditor") secured by an asset described as 2005 Ford Freestyle ("Vehicle") is determined to be a secured claim in the amount of $3,500.00, and the balance of the claim, is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $3,500.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

32.	**17-23596-E-13** **TGM-1**	**KRYSTAL/JONATHAN HASSON** **Harry Roth**	**OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK, N.A.** **6-16-17 [14]**

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

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

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

FN.1. Creditor has not specified clearly whether the Motion is noticed according to Local Bankruptcy Rule 9014-1(f)(1) or (f)(2). The Notice of Motion states that a hearing will be held for an Objection to Confirmation. Based upon language that no written response is necessary, the court treats the Motion as being noticed according to Local Bankruptcy Rule 9014-1(f)(2). Counsel is reminded that not complying with the Local Bankruptcy Rules is cause, in and of itself, to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(c)(l).

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on June 16, 2017. By the court's calculation, 46 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 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing ----------.

The Objection to Confirmation of Plan is sustained.

U.S. Bank National Association, as Trustee, successor in interest to Bank of America National Association, as Trustee, successor by Merger to LaSalle Bank National Association, as Trustee for Bear Stearns Asset Backed Securities I Trust 2005-HE8, Asset-Backed Certificates, Series 2005-HE8, Creditor with a secured claim, opposes confirmation of the Plan on the basis that the Plan does not cure the arrears owed to Creditor.

Creditor's objection is well-taken. 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 $60,630.49 in pre-petition arrearages. The Plan does not propose to cure all of those arrearages. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearages.

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 a creditor with a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

33. **17-20997-E-13** **NATALIA JEFFS**
GW-3 **Gerald White**

CONTINUED MOTION FOR COMPENSATION FOR GERALD L. WHITE, DEBTOR'S ATTORNEY
6-13-17 [50]

REMOVED FROM CALENDAR PER ORDER DATED 7/17/2017
DOC. 57

Final Ruling: No appearance at the August 1, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 13, 2017. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion for Allowance of Professional Fees 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 is removed from calendar.

Gerald White, the Attorney ("Applicant") for Natalia Jeffs, Chapter 13 Debtor ("Client"), makes a First Interim Request for the Allowance of Fees and Expenses in this case. Applicant requests fees in the amount of $9,045.00 and costs in the amount of $324.00.

On July 17, 2017, the court issued an order granting the Motion and removing this matter from the August 1, 2017 calendar.