

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

**Honorable Christopher M. Klein**  
**Bankruptcy Judge**  
**Sacramento, California**

**September 10, 2019 at 2:00 p.m.**

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1.	<a href="#"><u>19-24006</u></a> -C-13 <a href="#"><u>DPC-1</u></a>	DONALD THOMAS Richard L. Jare	<b>OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK</b> 8-6-19 <a href="#"><u>19</u></a>
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**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 6, 2019. 14 days' notice is required. That requirement was met.

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

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

- A. Debtor did not appear at the Meeting of Creditors held on August 1, 2019. The court notes that Debtor appeared at the continued meeting held on August 29, 2019.

- B. Debtor is delinquent \$150.00 in plan payments. Another payment of \$150.00 is due prior to the hearing. Debtor has paid \$0.00 into the Plan.
- C. Debtor has not provided the Trustee with a copy or transcript of the most recent pre-petition tax return.

## DISCUSSION

Trustee's objections are well-taken.

Debtor is \$150.00 delinquent in plan payments, which represents one month of the \$150.00 plan payment. Before the hearing, another plan payment will be due. According to Trustee, the Plan in § 2.01 calls for payments to be received by Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A)(i); FED. R. BANKR. P. 4002(b)(3). Debtor has failed to provide the tax transcript. That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

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

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

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

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

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

**THRU #3**

**Final Ruling:** No appearance at the September 10, 2019 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 6, 2019. 28 days' notice is required. That requirement was met.

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") objects to Lorenzo Naranjo's ("Debtor") discharge in this case. Objector argues that Debtor is 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 February 12, 2019. Case No. 19-20843. Debtor received a discharge on May 20, 2019. Case No. 19-20843, Dckt. 18.

The instant case was filed under Chapter 13 on June 17, 2019.

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 May 20, 2019, which is less than four years preceding the date of the filing of the instant case. Case No. 19-20843, 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. 19-23819), 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, (“Objector”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Objection to Discharge is sustained, and upon successful completion of the instant case, Case No. 19-23819, the case shall be closed without the entry of a discharge.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 6, 2019. 14 days’ notice is required. That requirement was met.

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

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

- A. Debtor’s Plan appears to rely on a motion to value the claim of Ally Financial with respect to a 2014 Chevrolet Volt. At the time the Opposition was filed no motion was pending.
- B. Debtor’s Plan may not provide for all of Debtor’s disposable income. Debtor proposes monthly payments of \$4,500.00. Debtor testified at the Meeting of Creditors that his gross income is between \$10,000.00 and \$12,000.00 per month, not the \$1,697.01 listed on his Schedule I.
- C. Debtor lists Wells Fargo Bank in Schedule D secured by a “2012 Chevrolet Cruz” but the debt is not provided for in the plan.

## DISCUSSION

Trustee's objections are well-taken.

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of Ally Financial. Debtor has since filed a Motion to Value the Secured Claim and the matter is set for September 17, 2019. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

In objecting to confirmation, the Trustee alleges that the Plan violates 11 U.S.C. § 1325(b)(1), which provides:

If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or the plan provides that all of the debtor's projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan.

The Trustee alleges that Debtor testified that his gross income far exceeds what Debtor has listed in his Schedules.

**At the hearing -----**

The Trustee asserts that Debtor plan is not feasible as it does not provide for Wells Fargo's secured claim, as reflected on Debtor's Schedule D. *See* 11 U.S.C. § 1325(a)(6).

11 U.S.C. § 1322(a) is the section of the Bankruptcy Code that specifies the mandatory provisions of a plan. It requires only that a debtor adequately fund a plan with future earnings or other future income that is paid over to Trustee (11 U.S.C. § 1322(a)(1)), provide for payment in full of priority claims (11 U.S.C. § 1322(a)(2) & (4)), and provide the same treatment for each claim in a particular class (11 U.S.C. § 1322(a)(3)). Nothing in § 1322(a) compels a debtor to propose a plan that provides for a secured claim, however.

11 U.S.C. § 1322(b) specifies the provisions that a plan may include at the option of the debtor. With reference to secured claims, the debtor may not modify a home loan but may modify other secured claims (11 U.S.C. § 1322(b)(2)), cure any default on a secured claim—including a home loan—(11 U.S.C. § 1322(b)(3)), and maintain ongoing contract installment payments while curing a pre-petition default (11 U.S.C. § 1322(b)(5)).

If a debtor elects to provide for a secured claim, 11 U.S.C. § 1325(a)(5) gives the debtor three options:

- A. Provide a treatment that the debtor and creditor agree to (11 U.S.C. § 1325(a)(5)(A)),
- B. Provide for payment in full of the entire claim if the claim is modified or will mature by its terms during the term of the Plan (11 U.S.C. § 1325(a)(5)(B)), or

- C. Surrender the collateral for the claim to the creditor (11 U.S.C. § 1325(a)(5)(C)).

Those three possibilities are relevant only if the plan provides for the secured claim, though.

When a plan does not provide for a secured claim, the remedy is not denial of confirmation. Instead, the claimholder may seek termination of the automatic stay so that it may repossess or foreclose upon its collateral. The absence of a plan provision is good evidence that the collateral for the claim is not necessary for the debtor's rehabilitation and that the claim will not be paid. This is cause for relief from the automatic stay. *See* 11 U.S.C. § 362(d)(1).

Notwithstanding the absence of a requirement in 11 U.S.C. § 1322(a) that a plan provide for a secured claim, the fact that this Plan does not provide for respondent Creditor's secured claim raises doubts about the Plan's feasibility. *See* 11 U.S.C. § 1325(a)(6). That is reason to sustain the Objection.

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

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 26, 2019. 14 days' notice is required. That requirement was met.

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

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<b>The Motion to Incur Debt is denied.</b>
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Stacey Kearney ("Debtor") seeks permission to purchase a 2017 Hyundai Santa Fe Sport, with a total purchase price of \$21,365.50 and monthly payments of \$424.95 to Consumer Portfolio over 72 months with a 12.45% interest rate. Debtor asserts that his current vehicle, a 2005 Infinity G35, is 'in bad shape' and needs to be replaced. Dckt. 19.

#### **CHAPTER 13 TRUSTEE'S OPPOSITION:**

On September 3, 2019, the Chapter 13 Trustee filed an Opposition. Dckt. 26. The Trustee notes that Debtor currently owns a 2005 Infinity G35 which is being paid through the plan as a Class 2 creditor at \$187.09 per month at 5% interest. The Trustee questions whether Debtor has in good faith sought financially responsible financing for this vehicle.

#### **DISCUSSION:**

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at \*1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires



that the motion list or summarize all material provisions of the proposed credit agreement, “including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions.” FED. R. BANKR. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

Here, the transaction is not in the best interest of Debtor. The loan calls for a substantial interest charge—12.45%. Moreover, it is unclear to the court how in good faith Debtor could propose to purchase this car when paying holders of unsecured claims a 1% dividend. A debtor driven to seek the extraordinary relief available under the Bankruptcy Code is hard pressed to provide a good faith explanation as to how a “reward” for filing bankruptcy is to purchase this car and attempt to borrow money at a 12.45% interest rate.

The Motion is denied.

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

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

The Motion to Incur Debt filed by Stacey Kearney (“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 denied.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 6, 2019. 14 days' notice is required. That requirement was met.

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

<p><b>The Objection to Confirmation of Plan is sustained.</b></p>
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The Chapter 13 Trustee, David Cusick ("Trustee"), initially opposed confirmation on the basis that Debtor did not appear at the Meeting of Creditors. The Trustee filed a Status Report on August 26, 2019, noting that Debtor appeared at the August 22, 2019 Meeting of Creditors. However, the Trustee now asserts that Debtor stated that he is not surrendering the 2011 Dodge Ram or 2014 Sierra CRV listed in Class 3. The Trustee also notes that the Debtor lists the car payments in the amount of \$603.00 and \$540.00, respectively, on Schedule J. Dckt. 1. The Trustee questions whether the proposed plan payments are feasible given the additional expenses.

## DISCUSSION

Trustee's objections are well-taken. Trustee alleges that the Plan payment is not feasible. 11 U.S.C. § 1325(a)(6). The proposed payments of \$674.13 are insufficient to pay the contract payments of the vehicles that Debtor states will not be surrendered in the bankruptcy, as their monthly payments alone are \$1,143.00. Thus, the Plan may not be confirmed.

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

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

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

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

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

**THRU #7**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 20, 2019. 14 days' notice is required. That requirement was met.

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

**The Motion to Employ is granted.**

Daniel Butler ("Debtor") seeks to employ Cherie Smith ("Realtor") pursuant to Local Bankruptcy Rule 9014-1(f)(2) and Bankruptcy Code Sections 328(a) and 330. Debtor seeks the employment of the Realtor to sell real property located at 3220 Groveland Way, Antelope, California.

Debtor argues that Realtor's appointment and retention is necessary to ensuring the property is sold for fair market value.

Cherie Smith, a real estate agent of Realty One Group Complete, testifies that she is a licensed real estate agent in the State of California and familiar with the Antelope area. Cherie Smith testifies she and the company do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

Pursuant to § 327(a), a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals, including attorneys, to represent or assist the trustee in carrying out the

trustee's duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must not hold or represent an interest adverse to the estate and be a disinterested person.

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

Taking into account all of the relevant factors in connection with the employment and compensation of Realtor, considering the declaration demonstrating that Realtor does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Cherie Smith as Realtor for the Chapter 13 Estate on the terms and conditions set forth in the Residential Listing Agreement filed as Exhibit A, Dckt. 93. Approval of the commission is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

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

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

The Motion to Employ filed by Daniel Butler ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Employ is granted, and Debtor is authorized to employ Cherie Smith as Realtor for Debtor on the terms and conditions as set forth in the Residential Listing Agreement filed as Exhibit A, Dckt. 93.

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 20, 2019. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice). That requirement was met.

The Motion to Sell Property was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----  
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<p><b>The Motion to Sell Property is granted.</b></p>
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The Bankruptcy Code permits Daniel Butler, the Chapter 13 Debtor, ("Movant") to sell property under the confirmed plan after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here, Movant proposes to sell the real property commonly known as 3220 Groveland Way, Antelope, California ("Property").

The proposed purchaser of the Property is Dariy Dembo, DNA Enterprise, LLC, and the terms of the sale are:

- A. Purchase price \$280,000.00
- B. Broker Commission of 6% (\$16,800.00)
- C. The sale will pay all liens in full. The First Deed of Trust is to Wilmington Savings Fund Society totaling approximately \$220,000.00. The Second Deed of Trust is to Citibank, N.A. totaling approximately \$14,000.00.

**CHAPTER 13 TRUSTEE RESPONSE:**

The Chapter 13 Trustee filed a response on August 21, 2019 stating that he does not oppose the sale. The Trustee notes that there is a pending application to approve the employment of the real estate broker. The Trustee requests that the any proceeds in excess of the Homestead Exemption be disbursed to the Trustee through escrow. The Trustee also states that if the funds attributable to the Homestead Exemption are not reinvested in another homestead within 6 months the proceeds become non-exempt. Additionally, the Debtor is obligated to notify the Trustee of any change in address.

The Trustee flags for the court that Debtor's Motion did not include an Estimated Seller's Settlement Statement.

## **DISCUSSION**

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate.

Movant has estimated that a 6% percent broker's commission from the sale of the Property will equal approximately \$16,800.00. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker an amount not more than 6% percent commission.

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

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

The Motion to Sell Property filed by Daniel Butler, the Chapter 13 Debtor, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Daniel Butler, the Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Dariy Dembo, DNA Enterprise, LLC or nominee ("Buyer"), the Property commonly known as 3220 Groveland Way, Antelope, California ("Property"), on the following terms:

- A. The Property shall be sold to Buyer for \$280,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 98, and as further provided in this Order.
- B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.
- C. The Chapter 13 Debtor is authorized to execute any and all

documents reasonably necessary to effectuate the sale.

- D. The Chapter 13 Debtor is authorized to pay a real estate broker's commission in an amount not more than 6% percent of the actual purchase price upon consummation of the sale. The 6% percent commission shall be paid to Chapter 13 Debtor's broker, Cherie Smith.
- E. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Chapter 13 Debtor. Within fourteen days of the close of escrow, the Chapter 13 Debtor shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow.

The Debtor's homestead exemption shall attach to the proceeds of the sale held by the Trustee, who shall not disburse said proceeds except upon further order of the court.



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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 31, 2019. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1). That requirement was met.

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

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

The debtor, Tony Smith ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for plan payments of \$1,500.00 for 60 months with 10% dividend to general unsecured creditors. Amended Plan, Dckt. 19. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

#### CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on August 16, 2019. Dckt. 25. The Trustee asserts that the Plan does not work out mathematically and does not provide for the all the scheduled priority claims. The Trustee notes that there are priority claims filed by the IRS (Claim No. 4), Pam Selberg (Claim Nos. 5 and 6), and Bangs McCullen Butler, Foye, and Simmons (Claim No. 11).

#### DEBTOR'S REPLY

On August 28, 2019, Debtor filed a Reply. Dckt. 28. Debtor states that Claims 5 and 6 appear to be duplicates, but does not dispute that Debtor owes Pam Selberg \$55,000.00. The Debtor also states that Pam Selberg is being paid \$1,500.00 a month directly from Debtor's retirement plan pursuant to a "Quadro"

which the court notes is an Amended Qualified Domestic Relations Order (QDRO). The Debtor requests that in the Order confirming Pam Selberg should be treated as a Class 4 debt because those payments are made directly from the South Dakota retirement system.

## DISCUSSION

Upon review of the file claims, the court questions whether Claims 5 and 6 are duplicates as Debtor suggests. Claim 5 reflects \$55,000.00 based on “Court Order from Tony’s SD Retirement (QDRO) for \$1,500 per month” and Claim 6 reflects \$5,500.00 based on “10% interest” from “court order payment of attorney fees.”

### **At the hearing ----**

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

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

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

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

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

**THRU #13**

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

**Below is the court’s tentative ruling, rendered on the assumption that there will be no opposition to the 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 Debtors, Debtors’ Attorney], Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on August 27, 2019. 14 days’ notice is required. That requirement was met.

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

-----

**The Motion to Value Collateral and Secured Claim of Flagship Credit Acceptance, LLC (“Creditor”) is \$9,250.00, and Creditor’s secured claim is determined to have a value of \$9,250.00.**

The Motion filed by Jwyanza Broussard and Electa GreerBroussard (“Debtors”) to value the secured claim of Flagship Credit Acceptance, LLC (“Creditor”) is accompanied by Debtor’s declaration. Declaration, Dckt. 21. Debtor is the owner of a 2012 Toyota Camry SE (“Vehicle”). Debtor seeks to value the Vehicle at a replacement value of \$9,250.00 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).

**DISCUSSION**

The lien on the Vehicle’s title secures a purchase-money loan incurred in November 2016, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of

approximately \$14,300.00. Declaration, Dckt. 21. 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 \$9,250.00, 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 Collateral and Secured Claim filed by Jwyanza Broussard and Electa GreerBroussard ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Flagship Credit Acceptance, LLC ("Creditor") secured by an asset described as 2012 Toyota Camry SE ("Vehicle") is determined to be a secured claim in the amount of \$9,250.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$9,250.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

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

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors’ Attorney], Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on August 27, 2019. 14 days’ notice is required. That requirement was met.

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

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**The Motion to Value Collateral and Secured Claim of Chrysler Capital (“Creditor”) is \$11,277.00, and Creditor’s secured claim is determined to have a value of \$11,277.00.**

The Motion filed by Jwyanza Broussard and Electa GreerBroussard (“Debtors”) to value the secured claim of Chrysler Capital (“Creditor”) is accompanied by Debtor’s declaration. Declaration, Dckt. 21. Debtor is the owner of a 2015 Dodge Journey AVP (“Vehicle”). Debtor seeks to value the Vehicle at a replacement value of \$11,277.00 as of the petition filing date. As the owner, Debtor’s opinion of value is evidence of the asset’s value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

## **DISCUSSION**

The lien on the Vehicle’s title secures a purchase-money loan incurred in May of 2015, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$26,000.00. Declaration, Dckt. 26. 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

\$11,277.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion to Value Collateral and Secured Claim filed by Jwyanza Broussard and Electa GreerBroussard (“Debtors”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Chrysler Capital (“Creditor”) secured by an asset described as 2015 Dodge Journey AVP (“Vehicle”) is determined to be a secured claim in the amount of \$11,277.00, 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 \$11,277.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

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

**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 Debtors, Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on August 27, 2019. 14 days’ notice is required. That requirement was met.

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

**The Motion to Value Collateral and Secured Claim of the Franchise Tax Board is ~~XXXXX~~, and Creditor’s secured claim is determined to have a value of \$~~XXXX.XX~~.**

The Motion filed by Jwyanza Broussard and Electa GreerBroussard (“Debtors”) to value the secured claim for the tax years 2012, 2013, and 2014 of the Franchise Tax Board (“FTB” or “Creditor”) is accompanied by Debtor’s declaration. Declaration, Dckt. 31. That court also notes that Debtors filed a separate Motion to Value the Franchise Tax Board’s secured claim for the tax years 2015 and 2016 and is also accompanied by Debtors’ declaration. Dckts. 39 and 41.

The court notes that the FTB has not yet filed a proof of claim and the deadline for the FTB to file a claim is January 28, 2019. Dckt. 16. Debtors filed two separate motions for what would be included in a singular claim by the FTB because there are two different state tax liens filed against the Debtors. Debtors assert they do not own real property and their Motion seeks to value the personal property identified on their Schedules A/B (“Property”). Dckt. 11. Debtors seek to value the Property at a replacement value of \$31,650.79 as of the petition filing date. As the owner, Debtor’s opinion of value is evidence of the asset’s value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004). Additionally, Debtors expressly state that they are not including in their calculations the

value of any property attributable to their “ERISA-qualified” plans because the funds are not included in the property of the estate.

The Debtors argue that the FTB’s claim should be valued at \$6,011.00 after accounting for senior lien holders. Debtors assert that the 2015 Dodge Journey and 2012 Toyota Camry identified on their Schedules A/B should be valued at \$11,277.00 and \$9,250.00, respectively, and that those assets are fully encumbered by claims asserts by Chrysler Capital and Flagship Credit Acceptance. Claim Nos. 2-1 and 4-1. Debtors further assert that the remaining equity, totaling \$6,011.00, should be allocated to the FTB claim because Debtors claim that the FTB lien for the tax years 2012 through 2014 was filed before the IRS filed its Notice of Federal Tax Lien. Debtors assert, without any legal authority, that priority of competing Federal and State tax liens is determined by comparing the dates of the respective tax liens.

The court notes that Debtors’ request for this court to determine lien priority requires the filing of an adversary proceeding. 26 U.S.C. § 7001(2). Further, the court flags for Debtors that a federal tax lien is effective upon assessment against all persons, even in the absence of recondition of the lien. 26 U.S.C. § 6321. “A federal tax lien takes priority over competing liens unless the competing lien was fully established prior to the attachment of the federal lien.” *Aluisi v. Kolkka*, 459 F. Supp. 2d 1015, 1017 (E.D. Cal. 2006) internal citations omitted. Further, 26 U.S.C. 6323(a) expressly identifies the types of recorded liens that can have priority over an unfiled or later filed Notice of Federal Tax Lien, however, statutory liens, like state taxing authority liens, are not identified. Accordingly, this court would, in any future adversary proceeding seeking a lien priority determination between the IRS and the FTB, need to compare the dates on which each lien becomes choate.

**At the hearing Debtors’ counsel provided the court with additional authority on which the court can make such a determination -----**

The Motion is granted.

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

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

The Motion to Value Collateral and Secured Claim filed by Jwyanza Broussard and Electa GreerBroussard (“Debtors”) (“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 the Franchise Tax Board (“FTB” or “Creditor”) secured by an asset described as property identified on Debtors Schedules A/B (Dckt. 11) (“Property”) is determined to be a secured claim in the amount of \$**xxxx.xx**, and the balance of the claim is an unsecured claim (whether priority or general unsecured claim) to be paid through the confirmed bankruptcy plan.



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

**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 Debtors, Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on August 27, 2019. 14 days’ notice is required. That requirement was met.

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

-----

**The Motion to Value Collateral and Secured Claim of the Internal Revenue Service is denied as moot.**

The Motion filed by Jwyanza Broussard and Electa GreerBroussard (“Debtors”) to value the secured claim of the Internal Revenue Service (“IRS” or “Creditor”) is accompanied by Debtor’s declaration. Declaration, Dckt. 36. Debtors assert they do not own real property and their Motion seeks to value the personal property identified on their Schedules A/B (“Property”). Dckt. 11. Debtors seek to value the Property at a replacement value of \$31,650.79 as of the petition filing date. As the owner, Debtor’s opinion of value is evidence of the asset’s value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004). Additionally, Debtors expressly state that they are not including in their calculations the value of any property attributable to their “ERISA-qualified” plans because the funds are not included in the property of the estate. The court notes that the IRS tax lien is not extinguished by virtue of Debtors’ Motion to Value and would, to the extent allowable by law, continue to attach to the retirement accounts outside of the bankruptcy.

The Debtors argue that the IRS’ claim should be valued at \$0.00 because there is no equity remaining after accounting for the senior lien holders. Debtor assert that the 2015 Dodge Journey and 2012 Toyota Camry identified on their Schedules A/B have values of \$11,277.00 and \$9,250.00, respectively,

and that those assets are fully encumbered by claims asserts by Chrysler Capital and Flagship Credit Acceptance. Claim Nos. 2-1 and 4-1. Debtors assert that the remaining equity, totaling \$6,011.00, is encumbered by the senior claim of the Franchise Tax Board.

The court notes that neither the Franchise Tax Board has not yet filed a claim in this case and the IRS filed Claim No. 8-1 which does not assert a secured claim. The court further notes that the governmental entities have until January 28, 2020 to file a timely claim. Dckt. 16.

**Request for Determination of Lien Priority:**

Debtors assert, without any legal authority, that the recording of the Notice of State Tax Lien prior to the recording of the IRS Notice of Federal Tax Lien, dictates how this court should determine priority status between the competing taxing authorities. The Debtors have not provided this court with any authority to instruct it on how to assess priority determination between the IRS and a state taxing authority. The court notes that Debtors' request for this court to determine lien priority requires the filing of an adversary proceeding. 26 U.S.C. § 7001(2).

Further, the court flags for Debtors that a federal tax lien is effective upon assessment against all persons, even in the absence of recondition of the lien. 26 U.S.C. § 6321. "A federal tax lien takes priority over competing liens unless the competing lien was fully established prior to the attachment of the federal lien." *Aluisi v. Kolkka*, 459 F. Supp. 2d 1015, 1017 (E.D. Cal. 2006) internal citations omitted. Further, 26 U.S.C. 6323(a) expressly identifies the types of recorded liens that can have priority over an unfiled or later filed Notice of Federal Tax Lien, however, statutory liens, like state taxing authority liens, are not identified. Accordingly, this court would, in any future adversary proceeding seeking a lien priority determination between the IRS and the FTB, need to compare the dates on which each lien becomes coate.

The Motion is denied as moot, given that the IRS' proof of claim does not list a secured claim and that the relief requested by Debtors is beyond the scope of this contested matter. Claim No. 8-1.

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

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

The Motion to Value Collateral and Secured Claim filed by Jwyanza Broussard and Electa GreerBroussard ("Debtors") ("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 denied as moot.

13. [19-24867](#)-C-13      **JWYANZA BROUSSARD AND**      **MOTION TO VALUE COLLATERAL OF**  
[MC-5](#)      **ELECTA GREERBROUSSARD**      **FRANCHISE TAX BOARD**  
Muoi Chea      8-27-19 [[39](#)]

No Tentative See Item 11.

**THRU #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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 26, 2019. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1). That requirement was met.

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

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

The debtor, Jessie Ortiz ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for 60 plan payments, with payments of \$6,500.00 through June 2019 and payments of \$9,300.00 starting in July 2019 and proposes a 0% dividend to general unsecured creditors. Amended Plan, Dckt. 92. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

**CHAPTER 13 TRUSTEE'S OPPOSITION**

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on August 16, 2019. Dckt. 105. Debtor's Plan and the Motion provide for different step up amounts in the Plan payments. The Trustee is uncertain what plan payment Debtor is actually proposing, \$9,300.00 or \$9,560.00. The Trustee notes that a change in Mortgage Payment was filed by U.S. Bank on May 28, 2019. The Trustee states that a letter was sent to Debtor's counsel indicating that the Plan payment was increasing to \$9,550.53 effective August 25, 2019.

**DEBTOR'S REPLY**

Debtor states that he confirms that there was a Notice of Mortgage Payment Change filed on May 28, 2019 and requests that the Chapter 13 Plan payments be increased to \$9,560.00 in the order confirming the plan.

## DISCUSSION

**At the hearing ---**

~~The Amended Plan complies with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is confirmed.~~

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

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

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

~~**IT IS ORDERED** that the Motion is granted, and Debtor's Amended Chapter 13 Plan filed on July 26, 2019, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

**Final Ruling:** No appearance at the September 10, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on July 26, 2019. 28 days’ notice is required. That requirement was met.

The Motion to Avoid Judicial Lien 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 Avoid Judicial Lien is denied without prejudice.**

This Motion requests an order avoiding the judicial lien of Cochran Firm Criminal Defense Section, PC (“Creditor”) against property of the debtor, Jessie Ortiz (“Debtor”) commonly known as 7706 El Douro Drive, Sacramento, California (“Property”).

A judgment was entered against Debtor in favor of Creditor in the amount of \$75,000.00. Exhibit A, Dckt. 97. An abstract of judgment was recorded with Sacramento County on October 23, 2016, that encumbers the Property. *Id.*

Pursuant to Debtor’s Schedule A, the subject real property has an approximate value of \$782,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total \$943,426.09 as of the commencement of this case are stated on Debtor’s Schedule D. Dckt. 1. Debtor has not claimed an exemption pursuant to California Code of Civil Procedure on Debtor’s Schedule C. Dckt. 1. Since there is no exemption claimed the exemption cannot be impaired. Accordingly, the Debtor’s Motion will be denied without prejudice to the Debtor renewing the Motion if Debtor is able to claim the property as exempt and files an Amended Schedule C.

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

hearing.

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Jessie Ortiz (“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 Avoid Judicial Lien is DENIED without prejudice.

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

**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, creditors, parties requesting special notice, and Office of the United States Trustee on August 6, 2019. 14 days’ notice is required. That requirement was met.

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

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

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

- A. Debtor is delinquent \$4,539.15 in plan payments. Another payment of \$4,539.15 is due prior to the hearing. Debtor has paid \$0.00 into the Plan.

## **DISCUSSION**

Trustee’s objections are well-taken. Debtor is \$4,539.15 delinquent in plan payments, which represents less than one month of the \$4,539.15 plan payment. Before the hearing, another plan payment will be due. According to Trustee, the Plan in § 2.01 calls for payments to be received by Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C.



§ 1325(a)(6).

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

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

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

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

**IT IS ORDERED** that the Objection is sustained and the plan is not confirmed.

THRU #18

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 23, 2019. 14 days' notice is required. That requirement was met.

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

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

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

- A. Debtors' Plan relies on a pending Motion to Avoid Lien of Ally Financial, which was set for August 13, 2019. Dckt. 15.

**DEBTOR'S RESPONSE:**

Debtor responds that the Motion to Value was continued to September 10, 2019. Dckt. 34, Civil Minutes. Debtor requests that the Objection to Confirmation be continued to allow for the Motion to Value to resolve.

## DISCUSSION

Trustee's objections are well-taken.

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of Ally Financial. The Motion is set for hearing on September 10, 2019. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

### **At the hearing ----**

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

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

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

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

~~**IT IS ORDERED** that the Objection is sustained and the plan is not confirmed.~~

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on July 7, 2019. 28 days' notice is required. That requirement was met.

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

**The Motion to Value Collateral and Secured Claim of Ally Financial, Inc.  
("Creditor") is XXXXX**

The Motion filed by Peter and Rebecca Delgado ("Debtors") to value the secured claim of Ally Financial, Inc. ("Creditor") is accompanied by Debtor's, Peter Delgado's, declaration. Declaration, Dckt. 17. Debtor is the owner of a 2016 Toyota Tacoma ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$23,000.00 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). Debtor claims that the car has 75,000 miles, has scratches on the bed of the truck and on the grill and bumper, has stains on the seats, and the radio, transmission, and windows are not working properly.

#### **CHAPTER 13 TRUSTEE'S RESPONSE:**

On July 24, 2019, the Chapter 13 Trustee responded that he has no opposition to the requested relief. Dckt. 24.

#### **CREDITOR'S OPPOSITION:**

On July 30, 2019, Creditor filed an Opposition to Debtor's Motion to Value. Dckt. 26. Creditor disputes Debtor's valuation and asserts that the value of the vehicle at the time of filing is \$30,825.00 and should be determined to fully secure its claims of \$28,795.10. *Id.* Creditor's Opposition is accompanied by the declaration of Peter Milton. Dckt. 28. Peter Milton properly authenticates Exhibit D, a NADA online Report for a 2016 Toyota Tacoma with 75,000 miles valuing the vehicle at \$30,825.00. Dckt. 27.

## DEBTOR'S REPLY:

Debtor's Counsel filed a Reply noting that the Debtor provided his lay opinion regarding the value of the vehicle and identified several issues with the vehicle that would affect the valuation.

## DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on December 26, 2015, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$28,437.00. Declaration, Dckt. 17.

At the August 13, 2019 hearing the matter was continued to allow the parties additional time to determine if a settlement can be reached.

### **At the hearing the parties addressed their stated valuations-----**

~~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 \$xxxx.xx, the value of the collateral. See 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.~~

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

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

~~The Motion to Value Collateral and Secured Claim filed by Peter and Rebecca Delgado ("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 Ally Financial, Inc. ("Creditor") secured by an asset described as 2016 Toyota Tacoma ("Vehicle") is determined to be a secured claim in the amount of \$xxxx.xx, 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 \$xxxx.xx and is encumbered by a lien securing a claim that exceeds the value of the asset.~~

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

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Local Rule 3007-1 Objection to Claim—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Debtor, Debtor's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on July 17, 2019. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition). This requirement was met.

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

<p><b>The Objection to Proof of Claim Number 10-1 of Christine Bunt is <span style="color: red;">XXXX</span>.</b></p>
---

Donald Ulicny, the Chapter 13 Debtor, ("Objector") requests that the court disallow the claim of Christine Bunt ("Creditor"), Proof of Claim No. 10-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be a priority claim for a domestic support obligation in the amount of \$70,394.50. Objector asserts that the claim is not a domestic support obligation but a property equalization payment as a result of Debtor's divorce from Creditor. Additionally, Debtor disputes any attorneys fees sought by Creditor.

Debtor states that he and Creditor were married and that in 2010 entered into a Separation Agreement in 2010 in New York State. Under the Separation Agreement the parties reached an agreement on property division and waived spousal support. Debtor states that under the agreement Debtor was to pay Creditor \$90,000.00 over 15 years with \$500.00 monthly payments. Debtor claims that he owes Creditor \$40,952.56. Dckt. 32, Exhibit B "Debtor Payment Ledger".

Debtor states that in 2014 he paid a lump sum of \$25,000.00, this payment triggered a subsequent proceeding in the New York State Court to address whether that payment was an advance and whether Debtor needed to resume the \$500.00 monthly payments. The New York court determined that the payment was an advance that the Debtor was to resume monthly payments starting in August 2017. Debtor claims that Creditor's claim does not appear to credit payments made since August 2017 and seeks attorneys fees that Debtor disputes were awarded.

## CREDITOR'S RESPONSE:

On September 3, 2019, Creditor's attorney, who discloses that she is not admitted to practice before this court, filed an "Affirmation" on behalf of her client, Christine Bunt. Dckt. 43. The filing did not include a proof of service and it is not clear whether Debtor or Debtor's Attorney received a copy. The filing states that Creditor's attorney is was on vacation when the Objector's Motion was received by her office and is presently assisting her client in finding an attorney authorized to appear. Creditor requests and additional two weeks to file a response.

## DISCUSSION

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

### At the hearing ---

Based on the evidence before the court, Creditor's claim is **xxxx**. The Objection to the Proof of Claim is **xxxx**.

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 Christine Bunt ("Creditor"), filed in this case by Donald Ulicny, the Chapter 13 Debtor, ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection to Proof of Claim Number 10-1 of Creditor is **xxxx**.

**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 July 20, 2019. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition). That requirement was met.

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).

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

The debtor, Deshaunna Payne ("Debtor") seeks confirmation of the Modified Plan to address missed plan payments resulting from expenses and lost wages as a result of legal incident involving Debtor's daughter. Declaration, Dckt. 37. The Modified Plan provides \$1,499.00 to be paid for 5 months and \$2,050.16 for 55 months, and a 0% percent dividend to unsecured claims. Modified Plan, Dckt. 35. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

## CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on August 27, 2019. Dckt. 43. The Trustee asserts that the Debtor's proposed payments complete the plan within 62 months, exceeding the allowable time.

## DISCUSSION

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Chapter 13 Trustee, the Plan will complete in 62 months. The



Plan exceeds the maximum sixty months allowed 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 the debtor, Deshaunna Payne (“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.

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 30, 2019. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1). That requirement was met.

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

<p><b>The Motion to Confirm the Amended Plan is <span style="color: red;">XXXXX</span>.</b></p>
---

The debtor, Judy Warren ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for monthly payments of \$1,087.55 through July 2019 and then payments of \$1,450.00 for the remaining 58 months and a proposes a 0% dividend to the general unsecured creditors. Amended Plan, Dckt. 39. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

#### CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on August 16, 2019. Dckt. 52. The Chapter 13 Trustee asserts that the Plan fails the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). The Debtor's non-exempt equity totals \$15,000.00 and the Debtor proposes a 0% dividend to general unsecured creditors. The non-exempt equity is based on interests in whole life insurance policies listed on Debtor's Schedule B. Dckt. 30.

#### DEBTOR'S RESPONSE:

On September 2, 2019 Debtor responded to the Trustee's Opposition. Dckt. 56. The Debtor states that she will file an Amended Schedule C before the hearing to address the Opposition.

## DISCUSSION

### At the hearing -----

~~----- The Amended Plan xxxx with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is xxxx confirmed.~~

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

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

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

~~----- **IT IS ORDERED** that the Motion is granted, and Debtor's Amended Chapter 13 Plan filed on July 30, 2019, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

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

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 8, 2019. 14 days' notice is required. That requirement was met.

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

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

PHH Mortgage Corporation ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

- A. Debtor's Plan does not provide for Creditor's pre-petition arrearage of \$1,281.54.

## **DISCUSSION**

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 \$1,281.54 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 PHH Mortgage Corporation (“Creditor”) holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

**Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the 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.

**Insufficient 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 August 22, 2019 (Dckt. 18) for all parties except for Chase Mortgage where the Supplemental Proof of Service states the party was served on August 24, 2019 (Dckt. 19. The court notes that the Motion and Proof of Services were filed with the court on September 2, 2019. Dckts. 13 through 19. This court's Local Rule 9014-1(e)(2) requires that a proof of service "shall be filed with Clerk concurrently with the pleading or documents served, or not more than three (3) days after they are filed."**

<p><b>The Motion to Extend the Automatic Stay is denied without prejudice.</b></p>
--

~~Richard Chastain ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 16-25118) was dismissed on June 21, 2019, after Debtor requested dismissal due to inability to make plan payments. See Order, Bankr. E.D. Cal. No. 16-25118, Dckt. 116. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.~~

~~Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because Debtor suffered a stroke and was not able to operate his business in February of 2019. Debtor states that he is able to make the proposed plan payments of \$1,985.00 a month and the that the proposed plan anticipates selling his primary residence and issuing a 100% dividend to general unsecured creditors.~~

~~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 demonstrated the case was filed in good faith/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 Richard Chastain (“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.~~

## FINAL RULINGS

24. [19-23842](#)-C-13  
[BW-1](#)

SERGIO AVILES  
Marc Voisenat

OBJECTION TO CONFIRMATION OF  
PLAN BY BANK OF AMERICA, N.A.  
7-19-19 [\[18\]](#)

THRU 26

**Final Ruling:** No appearance at the September 10, 2019 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 19, 2019. 14 days' notice is required. That requirement was met.

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Subsequent to the filing of this Objection, Debtor filed an Amended on August 20, 2019. Dckt. 34. Filing a new plan is a de facto withdrawal of the pending plan. The Objection is sustained, and the plan is not confirmed.

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

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

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



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

**Final Ruling:** No appearance at the September 10, 2019 hearing is required.

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 6, 2019. 14 days' notice is required. That requirement was met.

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Subsequent to the filing of this Objection, Debtor filed an Amended on August 20, 2019. Dckt. 34. Filing a new plan is a de facto withdrawal of the pending plan. The Objection is sustained, and the plan is not confirmed.

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

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

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

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

**Final Ruling:** No appearance at the September 10, 2019 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 6, 2019. 14 days’ notice is required. That requirement was met.

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Subsequent to the filing of this Objection, Debtor filed an Amended on August 20, 2019. Dckt. 34. Filing a new plan is a de facto withdrawal of the pending plan. The Objection is sustained, and the plan is not confirmed.

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

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

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

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

**Final Ruling:** No appearance at the September 10, 2019 hearing is required.  
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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 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.

**Final Ruling:** No appearance at the September 10, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on August 9, 2019. 28 days' notice is required. That requirement was met.

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

**The Motion to Value Collateral and Secured Claim of Santander Bank, N.A. ("Creditor") is \$17,000.00, and Creditor's secured claim is determined to have a value of \$17,000.00.**

The Motion filed by Christopher Frazier and Nicole Frazier ("Debtors") to value the secured claim of Santander Bank, N.A. ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 10. Debtor is the owner of a 2013 Toyota Venza ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$17,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

## **DISCUSSION**

The lien on the Vehicle's title secures a purchase-money loan incurred in January 2015, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$21,239.00. Declaration, Dckt. 10. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of \$17,000.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion to Value Collateral and Secured Claim filed by Christopher Frazier and Nicole Frazier (“Debtors”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Santander Bank, N.A. (“Creditor”) secured by an asset described as 2013 Toyota Venza (“Vehicle”) is determined to be a secured claim in the amount of \$17,000.00, 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 \$17,000.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

**Final Ruling:** No appearance at the September 10, 2019 hearing is required.

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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 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.

**Final Ruling:** No appearance at the September 10, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 5, 2019. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition). That requirement was met.

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.

<b>The Motion to Confirm the Modified Plan is granted.</b>
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11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Amanda Andrews and Christopher Aragon, Sr. ("Debtors"), have filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Supplemental Response indicating non-opposition on August 28, 2019. Dckt. 120. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtors, Amanda Andrews and Christopher Aragon, Sr. ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, and Debtor's Modified

**September 10, 2019 at 2:00 p.m.**

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Chapter 13 Plan filed on August 5, 2019, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

**Final Ruling:** No appearance at the September 10, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 22, 2019. 35 days' notice is required. FED. R. BANKR. P. 2002(b); LOCAL BANKR. R. 3015-1(d)(1). That requirement was met.

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Subsequent to the filing of this Objection, Debtor filed an Modified Plan on September 3, 2019. Dckt. 112. Filing a new plan is a de facto withdrawal of the pending plan. The Objection is sustained, and the plan is not confirmed.

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

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

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

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