

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

September 11, 2018, at 3:00 p.m.

1.	<u>18-22819-E-13</u> RANDY TURNER <u>TAG-1</u> Aubrey Jacobsen	MOTION TO CONFIRM PLAN 7-19-18 [35]
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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.

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

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 19, 2018. By the court's calculation, 54 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied.
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Randy Lee Turner ("Debtor") seeks confirmation of the First Amended Plan. Dckt. 39. Debtor states the Amended Plan is sought to provide for the secured claim of ALLY and a 100% distribution to unsecured creditors due to Debtor's inability to receive a discharge in this case. Dckt. 37. The Amended Plan calls for payment of \$3,460.00 by July 3, 2018, with payments of \$3,750.00 for 59 months commencing July 25, 2018. Dckt. 39. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on August 3, 2018. Dckt. 48. Trustee opposes confirmation on the following grounds:

1. Debtor is \$1,600.00 delinquent in plan payments, with another payment of \$3,750.00 due before this hearing. The proposed Amended Plan calls for a payment of \$3,460.00 by July 3, 2018, with payments of \$3,750.00 for 59 months commencing July 25, 2018. Debtor has only paid \$5,610.00 to date, leaving a delinquency of \$1,600.00.
2. Section 1.02 of the Plan (Dckt. 39) states "If there are nonstandard provisions this box must be checked. A nonstandard provision will be given no effect unless this section indicates one is included in section 7 and it appears in section 7." The new payment terms of the Amended Plan are included within the additional provisions of section 7. Dckt. 39 at 7.
3. Trustee's Objection to Confirmation of the prior plan was sustained by this court on July 17, 2018. Dckt. 42. The Debtor's response to Trustee's Objection stated Debtor would provide for future tax refunds. Dckt. 32. The Amended Plan does not provide for future tax refunds.

Debtor additionally filed Amended Schedule I (Dckt. 38) on July 19, 2018, reducing the listed payroll tax deduction from \$1,334.02 to \$760.70. Debtor has not provided proof of his tax deductions.

4. Debtor states in his Declaration supporting this Motion that his water and trash utilities are paid by a homeowner's association. However, Debtor fails to list any HOA fees on Amended Schedule J, line 4d.

DISCUSSION

Notice Shortcomings

The court notes the Notice does not comply with Local Bankruptcy Rule 9014-1(d)(3)(B)(iii), which requires the movant inform parties in interest that prehearing dispositions are available for review on the court's website. The court also notes it is questionable whether the notice meets the requirements of 9014-1(d)(3)(B)(ii). Because the Notice otherwise complies, the court will disregard the defect this time. However, counsel is reminded that not complying with the Local Bankruptcy Rules is cause, in and of itself, to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(c)(l).

Motion to Confirm

The Trustee's arguments here are well-taken.

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor has not made the payments required under the Amended Plan. Furthermore, Debtor's Amended Plan appears to contain several inaccuracies as addressed by the Trustee and discussed, *supra*. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on August 7, 2018. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied.

Hector Arnoldo Cavazos ("Debtor") seeks confirmation of the Amended Plan. Dckt. 44. Debtor states the Amended Plan proposes payments of \$3,700.00 for 3 months, with payments of \$4,100.00 for 57 months starting . Dckt. 44. Debtor indicates he can make the increased payments because his nonfiling spouse is ceasing voluntary 401K deductions and Debtor and his nonfiling spouse will be contributing \$3,600.00 per year in tax refunds. Dckt. 47. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on August 24, 2017. Dckt. 57.

Trustee notes the Additional Provisions of the Amended Plan call for the Class 1 claim of Cooper to be paid \$50 for 3 months, \$335.00 for 57 months, and for a lump sum of \$3,600.00 to be paid in June of each year from the tax refund. Trustee argues there may be issues with Trustee's payment software resulting in misdisbursement of funds to creditors, as an early payment would be would be normally disbursed to other

creditors and a late payment would result in reduced payments to other creditors as the software attempts to make the lump sum amount. To reduced undue burden, Trustee asserts Debtor should be required to advise Trustee the lump sum is to be paid only to the Class 1 claim, and to seek, personally, any funds misdisbursed to creditors due to failure to comply with the notice requirement.

Trustee also argues Debtor may not be able to make the Plan payments because Debtor filed Amended Schedules I and J (Dckt. 50) without providing evidence explaining the changes. Trustee provides a list of the changes on Schedule J:

Expenses	Original Schedule J	Amended Schedule J
Water and Sewer	\$93	\$157.34
Clothing	\$50	\$100
Personal Care	\$50	\$100
Entertainment	\$3.53	\$173.53
Charity	\$0	\$16.34
Vehicle Insurance	\$266.66	\$33.34
Auto Expenses	\$953	\$0
Feed/Fertilizer/Seed/Spray	\$0	\$400

DISCUSSION

The Trustee's arguments are well-taken. The Declaration supporting Debtor's Amended Schedules I and J states:

3. I am making amendments to my income and expenses to correct some discrepancies at the time of filing. Since filing, my wife and I both signed up as independent contractors for Door Dash, a food delivery service, because we were not able to afford our monthly expenses and were told about an opportunity to make extra money. We are paid for delivering and together gross about \$2,000.00 per month. We are personally responsible for all of our expenses while using our own cars for deliveries. Thus expenses include our gas, insurance, and maintenance for our cars.
4. The following are changes to my income: the stoppage of my wife's voluntary retirement funds in the amount of \$500.00, thus allowing us to have a disposable income of \$4,100.00 per month allowed by law, and I am not surrendering any property securing such claim to such holder.

Dckt. 51. Debtor does not explain what caused these “discrepancies,” which leaves the court to question whether the Amended Schedules provide accurate expenses.

Debtor states he and his nonfiling spouse have started working as independent contractors for DoorDash. Dckt. 47. The court is confused by the Debtor’s decision to list most of his vehicle expenses as business expenses (Amended Schedule I, Dckt. 50 at 6) for two reasons. First, Debtor still lists transportation costs of \$180.00 and vehicle insurance costs of \$33.34 as non-business expenses on Amended Schedule J. Second, Debtor has not alleged that he is using his vehicle entirely for the business and not mingling in personal use. Even if Debtor made this claim in his Declaration, Debtor’s statements would be subject to the court’s determination as to their credibility.

Inaccuracy as to Schedules I and J leave the court uncertain whether Debtor is able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Without an accurate picture of Debtor’s financial reality, the court cannot determine whether the Plan is confirmable.

To the extent providing lump sum payments hinders the plan payments from being made timely, the feasibility of the Amended Plan is again in question. 11 U.S.C. § 1325(a)(6). Moreover, the court is not required to confirm a plan providing for secured claims in a manner other than equal monthly payments. 11 U.S.C. § 1325(a)(5)(B)(iii)(I).

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 Hector Arnoldo Cavazos (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on August 6, 2018. By the court's calculation, 36 days' notice was provided. 14 days' notice is required.

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

<p>The Objection to Confirmation of Plan is sustained.</p>

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

- A. Debtor cannot afford Plan payments under 11 U.S.C. § 1325(a)(6) because the Motion proposed plan depends on a Motion to Value the secured claims of John Laughlin and Steven Beede in Class 2(C) to reduce secured claims to \$0.00. Debtor has not filed a motion to value to date. Without the motions being granted, Debtor will not have sufficient monies to fund the proposed plan.
- B. Debtor is \$5,100.00 delinquent under the terms of the proposed plan with another \$5,100.00 payment coming due before this hearing. Debtor has paid \$0.00 into the proposed plan to date.

- C. Debtor failed to appear at the Meeting of Creditors held on August 2, 2018. Trustee was informed Debtor was hospitalized, and does know whether the case is suitable under 11 U.S.C. § 1325. The Meeting of Creditors was continued to August 30, 2018, which is before the date of this hearing.
- D. Debtor is a self-employed notary receiving \$2,000.00 monthly according to her Schedule I. Debtor has failed to provide gross receipts, business expenses, and total net monthly income.

DISCUSSION

The Chapter 13 Trustee's objections are well-taken.

A review of Debtor's Plan shows that it relies on the court valuing the secured claims of John Laughlin, Steven Beede, and "Santander Consumer USA." Debtor has filed two motions to value secured claims, but those motions value the claims of Luis Garcia Samano's Second Deed of Trust (Dckt. 26) and BPE Law Group's Third Deed of trust (Dckt. 32) secured by Debtor's primary residence.

Debtor has not only failed to file motions to value where indicated by the proposed plan, but also fails to provide for the secured claims he has filed motions to value. Without the court valuing the claims, the Plan is not feasible. 11 U.S.C. § 1325(a)(6). Furthermore, the feasibility of the proposed plan is not determinable where Debtor has not indicated how he is providing for secured claims inside or outside the plan, notwithstanding apparent intent to have the secured claims valued at \$0.00.

As to the secured claims, the court also notes that the First Deed of Trust listed on the Debtor's Schedule D is "Ocwen Loan Servicing, LLC (Dckt. 13)," while Proof of Claim Number 4 shows this claim is held by US Bank National Association, as Successor Trustee, to Bank of America, National Association, successor by merger to LaSalle National Association, as Trustee for Ownit Mortgage Loan Trust, Mortgage Loan Asset-Backed Certificates, Series 2006-3. Proof of Claim, No. 4. Ocwen Loan Servicing, LLC is merely the servicer of the loan. *Id.*

Debtor has made the same mistake listing "Santander Consumer USA" as holding the secured claim for the 2008 Mercury Milan, whereas this claim is actually held by Quantum3 Group, LLC as agent for NCEP, LLC. Proof of Claim, No 5. In this instance, NCEO, LLC acquired its interest from Santander Consumer USA, Inc. as of June 30, 2015. *Id.*

Debtor is \$5,100.00 delinquent in plan payments, which represents one month of the plan payment. Before the hearing, another plan payment will be due. According to the Chapter 13 Trustee, the Plan in § 2.01 calls for payments to be received by the Chapter 13 Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Appearance is mandatory. *See* 11 U.S.C. § 343. Attempting to confirm a plan while failing to appear and be questioned by the Chapter 13 Trustee and any creditors who appear represents a failure to cooperate. *See* 11 U.S.C.

§ 521(a)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1). While it appears Debtor may have been hospitalized, no evidence of this has been provided to the court.

Debtor has failed to file a statement of gross business income and expenses attached to Schedule I. Line 8a of Schedule I requires Debtor “[a]ttach a statement for each property and business showing gross receipts, ordinary and necessary business expenses, and the total monthly net income.” Debtor is required to submit that statement and cooperate with the Chapter 13 Trustee. 11 U.S.C. § 521(a)(3). Debtor has not provided the required attachment.

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on August 9, 2018. By the court's calculation, 33 days' notice was provided. 14 days' notice is required.

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

<p>The Objection to Confirmation of Plan is sustained.</p>

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

- A. Debtor's gross monthly income is listed on Schedule I (Dckt. 1 at 30-31) as \$8,611.00 and her net income as \$6,170.82. After reviewing Debtor's State of California Direct Deposit Advice issued 5/31/18, Trustee believes Debtor has not accounted for all monthly deductions and that her actual net income is \$5,252.28. Additionally, after reviewing Debtor's Golden 1 Credit Union bank statements Trustee believes Debtor is receiving additional income of \$273.00 monthly from Social Security.
- B. Debtor's proposed plan may not be Debtor's best efforts under 11 U.S.C. § 1325(b). Debtor is over median income and is proposing plan payments of \$1,350 for 60 months with a 0% dividend to unsecured creditors. From 22C-2

reflects monthly disposable income on line #45 as -\$108.44. Debtor may not have properly completed the Form. It is not clear to Trustee why line #17 lists \$1,021.71 for involuntary deductions, \$200.00 on line #21 for childcare, \$300.00 on line #26 for continued contribution to the care of household/family members, \$50.00 on line #27 for protection against family violence and \$222.00 on line #33d for a Harley Davidson motorcycle Debtor is surrendering. Trustee believes line #45 should be \$289.85.

Additionally, Debtor indicated she is no longer married at the Meeting of Creditors, while Form 122C-1 lists Debtor as married.

The Chapter 13 Trustee's objections are well-taken. Essentially, the Chapter 13 Trustee argues that inaccuracies as to Debtor's income and expenses call into question the proposed plan's feasibility and whether the plan is Debtor's best efforts. The court finds that Trustee's personal knowledge testimony as to Debtor's actual deductions and additional income is credible. Dckt. 19. The court also concurs with Trustee that Debtor's Form 22C-2 contains inaccuracies (as example, Debtor's Schedule J lists monthly childcare and education costs at \$250, whereas lines #21 and #29 on Form 22C-2 total \$360.42). Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is feasible and Debtor's best efforts.

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

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

5. [18-24131](#)-E-13 JAMES/ANNE HILL
[DPC-1](#) Paul Bains

**OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
8-9-18 [13]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor’s Attorney on August 9, 2018. By the court’s calculation, 33 days’ notice was provided. 14 days’ notice is required.

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

<p>The Objection to Confirmation of Plan is overruled.</p>

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

- A. Trustee argues the plan unfairly discriminates against unsecured creditors. 11 U.S.C. § 1322(b)(1). Debtor’s plan proposes payments of \$642.00 for 60 months with a 26.9% dividend to unsecured creditors (totaling \$31,966.56). Section 7 of the proposed plan states “Debtors will pay directly to Debtors’ student loan creditors \$780.00 monthly, which is noted on Debtor’s Schedule J

Over the life of the plan Debtor will pay \$46,800.00 to student loan creditors, which is \$14,833.44 more than what the plan proposes for unsecured claims. Furthermore, Debtor does not specify what is paid to individual student loan creditors, instead providing a single lump sum of \$780.00.

B. Trustee argues further that the plan is not Debtor's best efforts. 11 U.S.C. § 1325(b). Debtor appears over median income and is proposing a 26.9% dividend to unsecured claim creditors. The Debtor received an income tax refund of \$5,378.00 for 2017. No future tax refund income is projected on Schedule I.

Trustee estimates based on his knowledge of the deductions, including a \$2,000.00 child tax credit for Debtor's children aged 6 and 7, that future refunds will likely be the same. Dividing the refund equally over the period of the plan would provide an added \$448.17 towards monthly plan payments.

DEBTOR'S REPLY

James David Hill and Anne Michele Hill ("Debtor") filed a Reply on August 14, 2018. Dckt. 17. Debtor's counsel states Debtor proposes to forego paying \$780.00 directly and suggests adding the additional \$780.00 into the plan through the Order Confirming. Debtor's counsel states further that Debtor proposes to turn over tax refunds in excess of \$2,000.00 through the life of the plan.

DISCUSSION

The Chapter 13 Trustee's objections are well-taken.

Debtor proposes to pay 26.9% to unsecured claims; however, Debtor proposes to pay \$780 towards various student loans outside the plan. This is unfair discrimination to unsecured claims under 11 U.S.C. § 1322(b)(1).

Debtor does not attempt to explain how such payment would not be an unfair discrimination. Instead, Debtor agrees to include the student loans to be paid pro rata with the other general unsecured claims.

Debtor also agrees to provide for all tax refunds in excess of \$2,000 annually during the term of the Plan, which will be paid into the plan for distribution thereunder.

With the above amendments, to be stated in the order confirming the plan, the Plan complies with the requirements of 11 U.S.C. §§ 1325 and 1322, and the Objection is overruled.

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

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

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

IT IS ORDERED that the Objection to Confirmation of the Plan is overruled, and the proposed Plan, as amended to increase the monthly plan payment by an additional \$780 a month and for all annual tax refunds in excess of \$2,000 to be paid into the plan, is overruled. Counsel for the Debtor shall prepare and forward to the Chapter 13 Trustee a proposed order confirming the Plan, including the above amendments, which upon approval by the Trustee shall be lodged with the court.

6. [18-24449-E-13](#) **STEVEN SMITH**
[AF-1](#) **Arasto Farsad**

**MOTION TO VALUE COLLATERAL OF
BANK OF NEW YORK MELLON AND/OR
MOTION TO AVOID LIEN OF BANK OF
NEW YORK MELLON
8-6-18 [12]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee and Creditor on August 6, 2018. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

The hearing on the Motion to Value Collateral and Secured Claim of the Bank of New York Mellon FKA The Bank of New York, as Trustee for the Certificate holders of CWABS, Inc., Asset Backed Certificates, Series 2006-SPS2, as owner and holder of loan/contract originated by Countrywide Home Loans, Inc., its assignees and/or successors in interest ("Creditor") is continued to 3:00 p.m. on XXXXXXXX to allow the parties to complete discovery, at which time the court will set the Motion for a final hearing.

The Motion to Value filed by Steven Claude Smith ("Debtor") to value the secured claim of the Bank of New York Mellon FKA The Bank of New York, as Trustee for the Certificate holders of CWABS, Inc., Asset Backed Certificates, Series 2006-SPS2, as owner and holder of loan/contract originated by Countrywide Home Loans, Inc., its assignees and/or successors in interest ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 444 Middle Creek Court, Chico, California ("Property"). Debtor seeks to value the Property at a fair market value of \$270,000.00 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 offers the Declaration of Ramon Gil, a broker and realtor with 25 and 37 years' experience, respectively, who opines that the value of the Property is \$270,000.00.

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

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

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

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

TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on August 24, 2018. Dckt. 17. Trustee argues that Debtor's Motion:

- (1) improperly combines a Motion to Value and Motion to Avoid Lien;
- (2) improperly combines the Motion and Exhibits;
- (3) fails to notify respondents about viewing prehearing dispositions as required by the Local Bankruptcy Rules; and
- (4) relies on a declaration not complying with the requirements of 28 U.S.C. § 1746.

CREDITOR'S OPPOSITION

Creditor filed an Opposition to this Motion on August 27, 2018. Dckt. 20. Creditor opposes the Motion on the following grounds:

1. The Motion fails to prove, by way of admissible and authenticated evidence, the validity, priority, and extent of a senior lien.
2. Notwithstanding that Debtor has failed to provide any admissible evidence of the value of the Property, and payoff figures for the senior lien, Secured Creditor believes the Value of the Subject Property is approximately \$410,000 – greater than the \$270,000 alleged in Debtor's Motion. In the event that this court allows Debtor to proceed with his Motion to Value, Secured Creditor respectfully requests more time to obtain and provide the Court with an appraisal.
3. Debtor may not modify or bifurcate the rights of Secured Creditor, as Secured Creditor's claim is a secured claim "secured only by a security interest in real property that is the debtor's principal residence." 11 U.S.C. § 1322(b)(2). Therefore, Debtor's valuation of the Property cannot be cause for a modification of Secured Creditor's lien and the MTV must be denied as a matter of law.

DEBTOR'S AMENDED MOTION

Debtor filed an Amended Motion on August 27, 2018. Dckt. 22. Debtor also filed Amended Declarations, Notice, and separately filed Exhibits. Dckts. 24-26.

Reviewing the Amended Declarations, it is clear Debtor sought to (and did) remedy the failure to comply with 28 U.S.C. § 1746 by stating clearly and declaring "under penalty of perjury" that "the foregoing is true and correct." The court also notes the Exhibits were filed separately and the Notice was amended to comply with the Local Bankruptcy Rules.

With its Amended Pleadings, Debtor has addressed substantially all of Trustee's opposition. While the court notes Local Bankruptcy Rule 9004-2(c)(1) requires motions be filed separately, the court is willing to waive the defect. However, counsel is reminded failure to comply is cause to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

DISCUSSION

Creditor opposes this Motion on three bases. First, Creditor asserts no evidence has been provided as to the amount of the senior lien. However, Debtor has provided an Amended Declaration stating the amount of the claim secured by the First deed of trust is \$287,000.00 (the court notes Creditor filed its Opposition before Debtor amended its pleadings, and may have based its opposition here on Debtor's failure to comply with 11 U.S.C. § 1746, which Debtor has remedied). Dckt. 25. Creditor has not asserted why Debtor's testimony as to the value is insufficient. *See Fed. R. Evid.* 701.

Creditor's next two opposing grounds are essentially tied. Creditor asserts Debtor has undervalued the Property, and notes that the claim, secured by Debtor's primary residence, cannot be bifurcated and must

be wholly unsecured. Creditor's statement of the law is correct, but relies on its other assertion that the property is undervalued.

Creditor requests that the court set a discovery schedule.

Therefore, the court shall continue the hearing to allow Creditor to obtain an appraisal of the Property.

As discussed, *supra*, Debtor has substantially resolved Trustee's opposition.

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 Steven Claude 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 hearing on the Motion to Value the secured claim of the Bank of New York Mellon FKA The Bank of New York, as Trustee for the Certificate holders of CWABS, Inc., Asset Backed Certificates, Series 2006-SPS2, as owner and holder of loan/contract originated by Countrywide Home Loans, Inc., its assignees and/or successors in interest ("Creditor") is continued to **3:00 p.m. on xxxxxxxxxxxx, 2018, to allow the parties to complete discovery.**

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

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

Sufficient Notice Not Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Debtor, Chapter 13 Trustee, and Office of the United States Trustee on July 26, 2018. By the court's calculation, 47 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

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

**The Objection to Proof of Claim Number 1-1 of Bank of America, N.A. is
overruled without prejudice.**

Ricky Leroy Green, Chapter 13 Debtor ("Objector") requests that the court disallow the claim of Bank of America, N.A. ("Creditor"), Proof of Claim No. 1-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$20,381.90. Objector asserts that the Statute of Limitations on the collection of contract claims in California is four years from the date the balance was due under the contract or four years from the date the last payment was made under the contract. Objector states that according to the Proof of Claim, the last transaction date and charge off date were May 31, 2013, and August 16, 2013, respectively. The date of last payment on the Statement of Account Information attached to the Proof of Claim states August 16, 2013.

DISCUSSION

INSUFFICIENT NOTICE PROVIDED

The Proof of Service for this Motion indicates that it was served “by depositing a true copy thereof enclosed in a sealed envelope with the postage thereon full prepaid, in the United States mail at Sacramento, CA 95831. Addressed as follows:

. . . BANK OF AMERICA, N.A.
100 North Tryon St
Charlotte, NC 28202 . . .”

<http://research.fdic.gov/>

Dckt. 34. There is no indication service was made by certified mail, and there was no attempt to address the receiving officer.

Service by Certified Mail Required

Federal Rule of Bankruptcy Procedure 9014(b) requires that motions and their contested matter-initiating documents (such as objections and applications) must be served in the same manner as a summons in an adversary proceeding. Federal Rule of Bankruptcy Procedure 7004(h) [emphasis added] requires:

“h) **Service of process on an insured depository institution.** Service on an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act) in a contested matter or adversary proceeding **shall be made by certified mail addressed to an officer** of the institution unless—

(1) the institution has appeared by its attorney, in which case the attorney shall be served by first class mail;

(2) the court orders otherwise after service upon the institution by certified mail of notice of an application to permit service on the institution by first class mail sent to an officer of the institution designated by the institution; or

(3) the institution has waived in writing its entitlement to service by certified mail by designating an officer to receive service.

The correct address for service can be confirmed at the FDIC webpage for federally insured financial institutions. Either service was not made to those addresses, or service was not addressed to an officer by name or “Attn: Officer for Service of Process.” Service was not made by certified mail. Service has not been adequately made on the federally insured financial institutions in this case.

Objection Grounds

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 factual basis 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).

California Code of Civil Procedure § 337 states in relevant part:

2. An action to recover (1) upon a book account whether consisting of one or more entries; (2) upon an account stated based upon an account in writing, but the acknowledgment of the account stated need not be in writing; (3) a balance due upon a mutual, open and current account, the items of which are in writing; provided, however, that where an account stated is based upon an account of one item, the time shall begin to run from the date of said item, and where an account stated is based upon an account of more than one item, the time shall begin to run from the date of the last item.

The Federal Rules of Bankruptcy Procedure provide:

A proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim.

FED. R. BANKR. P. 3001(f), and:

(a) In General. This rule applies in a chapter 13 case to claims (1) that are secured by a security interest in the debtor's principal residence, and (2) for which the plan provides that either the trustee or the debtor will make contractual installment payments. Unless the court orders otherwise, the notice requirements of this rule cease to apply when an order terminating or annulling the automatic stay becomes effective with respect to the residence that secures the claim....

....(d) Form and Content. A notice filed and served under subdivision (b) or (c) of this rule shall be prepared as prescribed by the appropriate Official Form, and filed as a supplement to the holder's proof of claim. The notice is not subject to Rule 3001(f)....

FED. R. BANKR. P. 3002.1(a) and (d).

Review of the grounds stated in the Motion

Debtor's Motion states with particularity the following grounds:

1. The filed Proof of Claim (Claim #1-1) shows a "Last Transaction" date of May 31, 2013 and a "Last Payment" date of August 16, 2013. The Statute of Limitations for commencing collection actions on debts of this type is four (4) years pursuant to California Code of Civil Procedure §337. A state statute

of limitations constitutes "applicable law" under 11 U.S.C. §502(b)(1). Therefore, the statute of limitations for collection of this debt has expired.

2. Section 502(a) provides 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 the law in the 9th Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis 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).
3. Here, Bank of America has made no showing, nor has presented any evidence, to substantiate the validity of their claim. Both the last transaction and payment dates fall outside the (4) four year Statute of Limitations.
4. Under the plain language of Rule 3002.1(d), this type of Notice does not constitute prima facie evidence of validity under Rule 3001(f), and the creditor has not presented sufficient evidence to support its claim. Because the claimant cannot rely on this presumption of validity, the claimant "has the burden of proving the reasonableness of its fee claim..." *Atwood v. Chase Manhattan Mortgage, Co.* (In re Atwood), 293 B.R. 227, 233 (B.A.P. 9th Cir. 2003). The requirement of reasonableness requires some evidence on that question once debtors objected, pointing out the missing essential element.
5. The claimant, Bank of America, has the affirmative burden of showing reasonableness as a matter of law. The objection, as here, need only note the absence of any such showing, and does not require evidence of support. In effect, the omission of the proof of claim to address an essential element of the substantive claim deprives the claimant of the favorable Rule 3001(f) evidentiary presumption regarding validity and amount.

Dckt. 30.

Debtor's Motion is in want of a simple statement explaining what the statutory period was and when it expired in this case. The Motion states "The filed Proof of Claim (Claim #1-1) shows a "Last Transaction" date of May 31, 2013 and a "Last Payment" date of August 16, 2013." Presumably, Debtor is arguing that the statute of limitations began running at the last payment date, and therefore ran before the August 22, 2017, filing. However, if the last payment made was timely, it appears the obligation would not have been in default and the statute of limitations would not have run before filing of this case. Cal. Civ. Proc. Code § 337. Debtor has not actually provided the court with an assertion of the applicable statutory period, including when it commenced and ceased to run.

Debtor's argument regarding notice provided is more confusing. Federal Rule of Bankruptcy Procedure 3002.1 applies to claims that are secured by a security interest in the debtor's principal residence. FED. R. BANKR. P. 3002.1(a). Creditor's Proof of Claim indicates it is not for a secured debt and Debtor has not argued otherwise. Proof of Claim, No. 1. Therefore, Debtor has not actually stated any grounds indicating Creditor is not entitled to the presumption of validity provided by Federal Rule of Bankruptcy Procedure 3001(f).

Based on the foregoing, the Objection to Claim is overruled.

Request for Attorney's Fees

Debtor states "Creditor is liable for attorney's fees." Dckt. 30 at 3:24. However, Debtor does not state within its Motion any grounds entitling them to or making Creditor liable for attorney's fees. Counsel is permitted to seek attorney's fees post-judgement if it is a prevailing party.

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 Bank of America, N.A. ("Creditor") filed in this case by Ricky Leroy Green, 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 1-1 of Bank of America, N.A. is overruled without prejudice.

IT IS FURTHER ORDERED that Debtor's request for attorney's fees is denied without prejudice.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on August 6, 2018. By the court's calculation, 36 days' notice was provided. 14 days' notice is required.

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

<p>The Objection to Confirmation of Plan is sustained.</p>

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

- A. Debtor is \$1,726.00 delinquent in plan payments, having paid \$0.00 into the Plan to date. Another plan payment will become due before the date of this hearing.
- B. Debtor's counsel failed to appear at the First Meeting of Creditors and Debtor therefore could not be examined. The Trustee does not have sufficient information to determine whether or not the case is suitable for confirmation under 11 U.S.C. § 1325. The Meeting of Creditors was continued to September 6, 2018.

The Chapter 13 Trustee's objections are well-taken.

The Chapter 13 Trustee asserts that Debtor is \$1,726.00 delinquent in plan payments, which represents one month of the \$1,726.00 plan payment. Another plan payment was due on August 25, 2018, thus bringing the delinquency to \$3,452.00. According to the Chapter 13 Trustee, the Plan in § 2.01 calls for payments to be received by the Chapter 13 Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Additionally, Debtor's Attorney did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Regarding the Meeting of Creditors, Debtor is required to "appear *and submit to examination*." 11 U.S.C. § 343(emphasis added). Attempting to confirm a plan while failing to appear and be questioned by the Chapter 13 Trustee and any creditors who appear represents a failure to cooperate. *See* 11 U.S.C. § 521(a)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 19, 2018. By the court's calculation, 54 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

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

Kendall and Cynthia Bertrand ("Debtors") seek confirmation of the Modified Plan because their real property at 9436 Feickert Drive, Elk Grove, California, was foreclosed on in May 2015, rendering current Amended Plan for a term longer than necessary. Dckt. 95. The Modified Plan seeks to change the plan payments to \$165.00 for the one remaining month of the Plan. Dckt. 96. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on August 27, 2018. Dckt. 98. Trustee Opposes the Motion on the following grounds:

1. Debtor's Declaration is affirmed as "true and correct to the best of my knowledge" and therefore not in compliance with the requirements of 28 U.S.C. § 1746.

2. Debtor's have not filed Supplemental Schedules I and J representing their current income and expenses. Debtor's Schedule I (Dckt. 11) reflects a dependent aged 17; Trustee is not certain Debtor's income and expenses are the same as four years ago.
3. Debtor plans to reduce the plan term from 60 to 48 months without an explanation. The court may not be able to determine whether the plan was filed in good faith under 11 U.S.C. § 1325(a)(3) without an explanation.
4. Debtor's proposed Modified Plan does need meet the requirements of Local Bankruptcy Rule 9004-1(c) which requires "the name of the person signing the document shall be typed underneath the signature."
5. Debtor's proposed Modified Plan provides a 52.21% dividend to unsecured creditors totaling \$3,630.31. Trustee has actually disbursed 78.27% totaling \$5,442.77. Trustee seeks clarification Debtor does not oppose the increased amount.

DISCUSSION

Debtor seeks Confirmation of the Modified Plan and provides as Exhibits Schedules I and J as filed in 2014, apparently indicating that income and expenses, after 4 years, have remained the same. The court cannot determine based on the information provide whether the Modified Plan is proposed in good faith and represents Debtor's best efforts. 11 U.S.C. §§ 1325(a)(3) and (b)(1).

Debtor also seeks to reduce the term of the Plan from 60 to 48 months. While Trustee argues no explanation has been provided, Debtor has asserted they are under median income and will pay off secured claims given a pending sale of their residence. Still, the court is uncertain whether Debtor's income and expenses have changed, and it is therefore unclear whether Debtor's Modified Plan, proposing a dividend of only 52.21%, meets the requirements of 11 U.S.C. § 1325(b)(4)(B).

Debtor's proposed Modified Plan provides a 52.21% dividend to unsecured creditors totaling \$3,630.31. Trustee has actually disbursed 78.27% totaling \$5,442.77. The Trustee having paid amounts not authorized under the Modified Plan, the Modified Plan does not appear feasible. 11 U.S.C. § 1325(a)(6).

Trustee observes that the Declaration is defective and so is not evidence on which court may rely because the affirmation statement does not comply with 28 U.S.C. § 1746(2). The "declaration" states "We declare under penalty of perjury that the forgoing statements are true and correct to the best of our knowledge and belief." Dckt. 95. 28 U.S.C. § 1746 requires an affirmation that the "foregoing is true and correct." Counsel's declaration is essentially a statement affirmed with plausible deniability. The court will give Debtor and his counsel the benefit of the doubt and hold them to their statements as having been made pursuant to the requirements of Federal Rules of Evidence 601 and 602.

Debtor's Modified Plan does not contain Debtor's typed name under her signature. Dckt. 96 at 21. Local Bankruptcy Rule 9004-1(c) requires "the name of the person signing the document shall be typed

underneath the signature.” As the Modified Plan complies with substantially all the requirements of the Local Rules, the court waives the defect. However, counsel is reminded that not complying with the Local Bankruptcy Rules is cause, in and of itself, to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(c).

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 Kendall Bertrand and Cynthia Lynn Bertrand (“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 Chapter 13 Trustee, creditors, and Office of the United States Trustee on August 6, 2018. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is XXXXXXXXXXXXXX

Blaire Nicole Knight ("Debtor") seeks confirmation of the Modified Plan to discontinue plan payments to Class 1 creditor LoanCare, LLC (mortgage arrears and ongoing payments) and to Class 2 creditor Allied Trustee Services (HOA arrears) due to the pending sale of Debtor's residence; the aforementioned secured creditors will be paid in full at closing. Dckt. 73. Debtor is also reducing the Plan term from 60 to 36 months because Debtor is below median income and no longer is trying to catch up on mortgage arrears. *Id.* 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on August 27, 2018. Dckt. 85. Trustee opposes the Motion on the following grounds:

1. Trustee has disbursed \$3,280.38 in ongoing mortgage payments to date, which is no longer authorized under the proposed Modified Plan.

2. Trustee is uncertain what the plan term is. The proposed Modified Plan calls for payments of \$221.00 for 36 months starting August 25, 2018. However, Debtor's petition was filed April 11, 2018, making August the fourth month under the plan and resulting in 39 months of payments.
3. Debtor's proposed Modified Plan does need meet the requirements of Local Bankruptcy Rule 9004-1(c) which requires "the name of the person signing the document shall be typed underneath the signature."

DEBTOR'S REPLY

Debtor filed a Reply to Trustee's Opposition on August 31, 2018. Dckt. 88. However, Debtor failed to file a supporting declaration or other evidence supporting the Reply.

Debtor's counsel replies to Trustee stating she can add language in the Order Confirming authorizing mortgage payments already made, clarifying that the Plan term is 36 and not 39 months. Debtor's counsel asserts further she was unaware of the requirements of Local Bankruptcy Rule 9004-1(c), that the form did not have a line to enter text on page 6, that she has used the same forms for 10 years without receiving an objection, that Debtor's name is printed on page 7 of the Modified Plan, and that she will meet the requirements of the Local Bankruptcy Rule in the future.

DISCUSSION

Debtor's modified Plan no longer authorizes payments which to date have already been made. Additionally, the Modified Plan term is unclear. Section 2.03 of the Plan states the term is 36 months starting August 25, 2018. However, Debtor's petition was filed April 11, 2018, making August the 4th month under the plan and resulting in 39 months of payments. Without clarifying these issues, the Modified Plan the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

At the hearing, counsel for the Debtor addressed the term of the plan, stating **XXXXXXXXXX**

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

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

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

IT IS ORDERED that Motion to Confirm the Modified Plan is **XXXXXXXXXX**.

11. [18-25104](#)-E-13 CHRISTOPHER MORRIS
[FF-1](#)

MOTION TO EXTEND AUTOMATIC
STAY
O.S.T.
8-29-18 [[14](#)]

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

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

Local Rule 9014-1(f)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, creditors on August 30, 2018. By the court's calculation, 12 days' notice was provided. The court set the hearing for September 11, 2018, and required Debtor's counsel to serve the Motion to Extend Automatic Stay on all interested parties by August 28, 2018. Dckt. 21.

The Motion to Extend the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing -----

-----.

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

Christopher Andrew Morris ("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. 18-24325) was dismissed on August 8, 2018, after Debtor failed to timely file documents. *See* Order, Bankr. E.D. Cal. No. 18-24325, Dckt. 19, August 8, 2018. 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.

Grounds for Extending Automatic Stay

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.

Review of Minimum Pleading Requirements for a Motion

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

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

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

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

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

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

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

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

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

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

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

Grounds Stated in Motion

Debtor has not provided any grounds, merely unsupported conclusions of law. The insufficient statement made by Debtor is:

- A. Good cause exists for the granting of the Motion to Extend Automatic Stay as to all creditors in this case. The extension is necessary to protect Debtors’ assets, absent the instant filing as the Debtors’ current case overcomes any presumption of bad faith. Dckt. 14 at 2:23-27.

That “ground” is merely a conclusion of law by Debtor. Presumably, Debtor believed that the court would make those conclusions in reading the Debtor’s Declaration, but the “grounds” cannot merely state the anticipated conclusions.

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

The Motion states that grounds are found in:

- A. These moving papers;
- B. Debtor’s Declaration;
- C. The records and pleadings on file herein; and
- D. Whatever else is presented at the hearing.

The court generally declines an opportunity to do associate attorney work and assemble motions for parties. Local Bankruptcy Rule 9014-1(d)(4) clearly provides that each document described in Local Bankruptcy Rule 9014-1(d)(1) shall be filed as a separate document. The court has not waived that Local Rule for Debtor. FN.1.

FN.1. The Debtor's Declaration has been filed in support of this Motion. Dckt. 17. It includes testimony which appears to not have been deemed relevant as "grounds" to be stated in the Motion. Debtor states that he filed the bankruptcy case to stop the foreclosure on his home. He is a construction manager inspector for SMUD and works a minimum of 10 hours a day, six days a week. Due to his work commitments, it is the Debtor's fault that the documents were not timely filed in the prior case as they were delivered to his attorney's paralegal late. He believes that he can cure the mortgage and have a 100% dividend plan.

While provided in the Declaration, Debtor and his counsel do not believe that such are "grounds" to be "stated with particularity" upon which the requested relief is based.

Debtor has not sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay. The Motion is 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 Extend the Automatic Stay filed by Christopher Andrew Morris ("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 extend the automatic stay, which terminates only as to Debtor pursuant to 11 U.S.C. § 362(c)(3)(A) thirty days after the commencement of this case, is denied. No determination is made by the court to the other provisions of 11 U.S.C. § 362(a) that apply to property of the bankruptcy estate.

FINAL RULINGS

12. [18-23003-E-13](#) **SUNG O AND JAE PALMER** **MOTION TO VALUE COLLATERAL OF**
[TAG-1](#) **Aubrey Jaconsen** **WELLS FARGO BANK, N.A.**
8-10-18 [\[35\]](#)

Final Ruling: No appearance at the September 11, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditor, and Office of the United States Trustee on August 10, 2018. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of Wells Fargo Bank, N.A. ("Creditor") is granted, and Creditor's secured claim is determined to have a value of \$5,565.00.

The Motion filed by Sung Hwan O and Jae Man Palmer ("Debtor") to value the secured claim of Wells Fargo Bank, N.A., dba Wells Fargo Dealer Services ("Creditor") is accompanied by Debtors' declaration. Debtors are the owners of a 2012 Chevrolet Sonic ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$5,565.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

TRUSTEE'S RESPONSE

The Chapter 13 Trustee, David Cusick ("Trustee") filed a Response to Debtor's Motion on August 24, 2018. Dckt. 56. Trustee does not oppose the Motion, but notes that the notice provided does not

advise respondents regarding pre-hearing dispositions, as required by Local Bankruptcy Rule 9014-1(d)(3)(B)(iii).

DISCUSSION

Notice Shortcomings

The Trustee notes the Notice does not comply with Local Bankruptcy Rule 9014-1(d)(3)(B)(iii), which requires the movant inform parties in interest that prehearing dispositions are available for review on the court's website. The court also notes it is questionable whether the notice meets the requirements of 9014-1(d)(3)(B)(ii). Because the Notice otherwise complies, and the Motion is unopposed, the court will disregard the defect this time. However, counsel is reminded that not complying with the Local Bankruptcy Rules is cause, in and of itself, to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(c)(l).

Motion to Value

The lien on the Vehicle's title secures a purchase-money loan incurred on December 4, 2014, which is more than 910 days prior to filing of the petition on May 14, 2014, to secure a debt owed to Creditor with a balance of approximately \$7,916.80. 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 \$5,565.00, 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 Sung Hwan O and Jae Man Palmer ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Wells Fargo Bank, N.A., dba Wells Fargo Dealer Services ("Creditor") secured by an asset described as 2012 Chevrolet Sonic ("Vehicle") is determined to be a secured claim in the amount of \$5,565.00, 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 \$5,565.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

13. [18-23358](#)-E-13 MATTHEW/TARA HANNAH **OBJECTION TO DEBTOR'S CLAIM OF**
[DPC-2](#) David Foyil **EXEMPTIONS**
7-17-18 [[24](#)]

Final Ruling: No appearance at the September 11, 2018, hearing is required.

<p>The Objection to Confirmation is dismissed without prejudice.</p>

David Cusick (“the Chapter 13 Trustee”) having filed a Notice of Dismissal, which the court construes to be an Ex Parte Motion to Dismiss the pending Objection on September 5, 2018. Dckt. 36; no prejudice to the responding party appearing by the dismissal of the Objection; the Chapter 13 Trustee having the right to request dismissal of the objection pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Matthew and Tara Hannah (“Debtor”); **the Ex Parte Motion is granted, the Chapter 13 Trustee’s Objection is dismissed without prejudice, the court removes this Objection from the calendar.**

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

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

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

IT IS ORDERED that Objection is overruled.

14. [18-23365-E-13](#)
[JB-4](#)

TENA ROBINSON
Jason Berg

CONTINUED MOTION TO CONFIRM
PLAN
7-23-18 [\[44\]](#)

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, interested parties, and Office of the United States Trustee on July 19, 2018. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

<p>The hearing on the Motion to Confirm Plan is continued to October 23, 2018, at 3:00 p.m. by prior order.</p>
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The Motion to Confirm the Amended Plan filed by Tena Robinson ("Debtor") was filed July 23, 2018. Dckt. 44. On August 23, 2018, Debtor filed an Ex Parte Application to continue the hearing on the Motion on the grounds that there is a contested Motion to Value Real Property set to be heard on November 6, 2018, which will directly and necessarily affect the court's decision on the Motion to Confirm First Amended Chapter 13 Plan. Dckt. 70.

This court granted the *Ex Parte* Application and by prior order continued the hearing on the Motion to October 23, 2018. Dckt. 77.

15. [17-27966-E-13](#)
[MSN-2](#)

CATHERINE COOK
Michael Noble

MOTION TO MODIFY PLAN
7-18-18 [\[52\]](#)

Final Ruling: No appearance at the September 11, 2018 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 the Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 18, 2018. By the court's calculation, 55 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is granted.
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11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Catherine Cook ("Debtor") has filed evidence in support of confirmation. Dckt. 54. David Cusick ("the Chapter 13 Trustee") filed a Response noting that if the Modified Plan is confirmed he will split the existing Class 1 claim to reflect new treatment and indicating non-opposition on August 28, 2018. Dckt. 61. Debtor filed a Reply to Trustee's Motion indicating acceptance with the Trustee's treatment of the class 1 post-petition arrears. Dckt. 64. 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 Catherine Cook (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Debtor’s Modified Chapter 13 Plan filed on July 18, 2018, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick (“the Chapter 13 Trustee”) for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Final Ruling: No appearance at the September 11, 2018 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 and Debtor's Attorney on August 8, 2018. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

The Objection to Claimed Exemptions 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 Objection to Claimed Exemptions is sustained, and the claimed exemptions are disallowed in their entirety.

David Cusick ("the Chapter 13 Trustee") objects to Fiaz Javed's ("Debtor") claimed exemptions. The California Code of Civil Procedure section 703.140(a)(3) provides that an unmarried person may elect to utilize the applicable provisions of that chapter or those within subdivision (b), not both. Here, Debtor has claimed exemptions under California Code of Civil Procedure sections 703.140(b)(2), (3), and (5), 704.730, 740.020, 740.040, and 740.070, and 11 U.S.C. § 522.

Additionally, Debtor attempts to exempt their real property at 290 Alcantar Circle, Sacramento, California 95834 under California Code of Civil Procedure sections 740.730 for \$370,000.00; however, Debtor is not entitled to the amount of the exemption because they are not 65 years of age and their Schedule I shows a monthly income of \$5,871.88 and no disability or supplemental security income.

Debtor has not filed a response or opposition to Trustee's Objection. The Chapter 13 Trustee's Objection is sustained, and the claimed exemptions are disallowed.

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

IT IS ORDERED that Objection is sustained, and the claimed exemptions for various personal property and real property at 290 Alcantar Circle, Sacramento, California 95834 under California Code of Civil Procedure §§ 703.140(b)(2), (3), and (5), 704.730, 740.020, 740.040, and 740.070, and 11 U.S.C. Section 522 are disallowed in their entirety.

17. 18-23695 -E-13 DPC-1	RANDY/GRACIELA ACHESON Peter Macaluso	CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 7-23-18 [25]
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Final Ruling: No appearance at the September 11, 2018, hearing is required.

<p>The Objection to Confirmation is overruled.</p>

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

- A. Debtor’s Plan fails the liquidation analysis. Debtor’s non-exempt equity totals \$3,900.00 and Debtor is proposing a 3.6% dividend to unsecured creditors, totaling \$2,565.00. The Trustee determines the Plan provides for a 5.2% dividend totaling \$3,753.00 and is not opposed to addressing the issue within the Order Confirming.
- B. Debtor’s Plan relies on a Motion to Value collateral with a hearing set for August 21, 2018, and therefore Debtor cannot make payments under the Plan.

The Chapter 13 Trustee’s objections are well-taken.

DEBTOR’S REPLY

Debtor’s counsel filed a Reply to Trustee’s Opposition on July 31, 2018. Dckt. 29. Debtor’s counsel argues The Liquidation Analysis computed by the Trustee fails to include the “estimated Chapter 7 Administrative Expense” which would be \$975.25, thus reducing the available amount to General

unsecured creditors to \$2,925.75. Debtor provides a liquidation analysis, attached as Exhibit A. *See*, Dckt. 30. Debtor's counsel argues further its Motion to Value that the plan is dependant upon is to be heard on August 21, 2018, to which no objection has yet to be filed.

TRUSTEE'S RESPONSE TO DEBTOR'S REPLY

Trustee filed a Response to Debtor's Reply on August 7, 2018. Dckt. 38. Trustee agrees that Debtor may be able to get the court to consider Chapter 7 Administrative Expenses, but Trustee does not believe Debtor has proven unsecured creditors will get what they would given Schedules signed May 29, 2018, case being filed June 13, 2018, and the assets including a bank account. Trustee renews its argument that the Plan is dependant on the Motion to Value.

DEBTOR'S RESPONSE TO TRUSTEE'S REPLY

Debtor filed a Reply to Trustee's Response on August 14, 2018. Dckt. 43. Debtor provides statements from Safe Credit Union and Chase Bank, alleging they show that Debtor had a balance of \$0.00 in Debtor's savings account from April 1, 2018 through June 30, 2018. Dckt. 44. Debtor states further the statement from Chase Bank shows a balance of \$1,870.49 on the date of filing. Debtors' Schedule B shows that the value of the bank account at \$2,500.00. Debtor's Schedule C shows that the amount of \$1,750.00 was exempted using statute C.C.P. § 704.070. Debtor concludes Debtor has therefore proven that unsecured creditors will receive at least what they would receive in a Chapter 7 proceeding, if not more.

DISCUSSION

Liquidation Analysis

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor's plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). Trustee concedes in his Response to Debtor's Reply that Debtor's liquidation analysis relies in part on consideration of Administrative Expenses that the court may consider permissible. While Trustee continues to object based on the time of filing and the existence of assets including bank accounts, Trustee has not provided any specific analysis contrary to Debtor's, and Debtor in its Response to Trustee's Reply provides a summary of bank account assets. *See*, Exhibits A & B, Dckt. 44. Debtor has provided a liquidation analysis. Exhibit A, Dckt. 30. Based on the aforementioned, the court finds Debtor has met the liquidation analysis.

Debtor's Reliance on Motion to Value Secured Claim

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of Safe Credit Union. Unfortunately, the court has denied the two motions to value, which render this Plan unconfirmable at this time.

AUGUST 21, 2018 HEARING

At the August 21, 2018, hearing on the Motion, the court continued the hearing to September 11, 2018. Dckt. 48.

TRUSTEE'S SUR-REPLY

Trustee filed a Sur-Reply on August 27, 2018. Dckt. 49. Trustee states Debtor has resolved his grounds for opposition, and Trustee no longer opposes this Motion.

Trustee having indicated his nonopposition, the Objection to Confirmation is overruled.

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

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

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

IT IS ORDERED that the Objection is overruled, and 's ("Debtor") Chapter 13 Plan filed on June 13, 2018, is confirmed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Final Ruling: No appearance at the September 11, 2018 Hearing is required.

Local Rule 9014-1(f)(1) Motion—No Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on July 20, 2018. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of Safe Credit Union ("Creditor") is granted, and the secured claim is determined to have a value of \$6,000.00.

The Motion filed by Randy Michael Acheson and Graciela Caldera Acheson ("Debtor") to value the secured claim of Safe Credit Union ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2005 Toyota Avalon ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$6,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The Trustee's argument regarding defective declarations is well-taken. Debtor's declaration fails to meet the requirements under 28 U.S.C. § 1746. The "declaration" states Debtors "declare under penalty of perjury that the forgoing statement is true and correct to the best of my knowledge and belief." Dckt. 18. 28 U.S.C. § 1746 requires an affirmation that the "foregoing is true and correct." Debtor's declaration is essentially a statement affirmed with plausible deniability.

Unfortunately, the court cannot conceive of a plausible explanation by an attorney who has regularly appeared in Department E for more than eight years to have a "plausible deniability" declaration.

Such indicates a less than good faith willingness of the Debtor to provide testimony in this court. Even more significantly, it fails to give the court credible testimony upon which the court can make the require finding of value. Fed. R. Evid. 601, 602.

AUGUST 21, 2018 HEARING

At the August 21, 2018, hearing on the Motion, the court continued the matter to September 11, 201, at 3:00p.m.Dckt. 46.

TRUSTEE'S AMENDED RESPONSE

Trustee filed an Amended Response to Debtor's Motion on August 28, 2018. Dckt. 51. Trustee asserts that Creditor filed Proof of Claim, No. 4, on July 20, 2018, reflecting a secured portion of \$6,000.00 and unsecured portion of \$3,291.97. As a result of Creditor's apparent nonopposition, the Trustee no longer opposes this Motion.

DEBTOR'S AMENDED DECLARATION OF PETER MACALUSO

Debtor's counsel Peter Macaluso filed his Amended Declaration on September 4, 2018. Dckt. 58. The Amended Declaration remedies the required attestation to comply with 11 U.S.C. § 1746.

DISCUSSION

Creditor values its secured claim at \$6,000.00. Proof of Claim, No. 4. The lien on the Vehicle's title secures a purchase-money loan incurred on December 13, 2013, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$9,649.94. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of \$6,000.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted. The 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 Randy Michael Acheson and Graciela Caldera Acheson ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Safe Credit Union ("Creditor") secured by an asset described as 2005 Toyota Avalon ("Vehicle") is determined to be a secured claim in

the amount of \$6,000.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$6,000.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

19. [18-23695-E-13](#) **RANDY/GRACIELA ACHESON** **CONTINUED MOTION TO VALUE**
[PGM-2](#) **Peter Macaluso** **COLLATERAL OF SAFE CREDIT UNION**
7-20-18 [[20](#)]

Final Ruling: No appearance at the September 11, 2018 Hearing is required.

Local Rule 9014-1(f)(1) Motion—No Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on July 20, 2018. By the court’s calculation, 32 days’ notice was provided. 28 days’ notice is required.

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

The Motion to Value Collateral and Secured Claim of Safe Credit Union (“Creditor”) is granted, with its secured claim determined to have a value of \$4,500.00.

The Motion filed by Randy Michael Acheson and Graciela Caldera Acheson (“Debtor”) to value the secured claim of Safe Credit Union (“Creditor”) is accompanied by Debtor’s declaration. Debtor is the owner of a 2007 Dodge Ram (“Vehicle”). Debtor seeks to value the Vehicle at a replacement value of \$4,500.00 as of the petition filing date. As the owner, Debtor’s opinion of value is evidence of the asset’s value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

TRUSTEE’S RESPONSE

Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition to this Motion on August 3, 2018. Dckt. 35. Trustee asserts the Debtor’s Declaration fails to meet the requirements of 28 U.S.C. § 1746

because Debtor attests to his statements only to the extent of “knowledge and belief.” Trustee notes that the Declaration was executed two days before the petition was filed, and uses the “/s/” format. Trustee is uncertain Debtor actually reviewed his Declaration. Furthermore, Trustee is unsure Debtor formed his opinion of value on July 20, 2018. Trustee questions Debtor’s credibility in this case and requests the court prohibit Debtor’s counsel from using the “/s/” signature.

AUGUST 21, 2018 HEARING

At the August 21, 2018, hearing on the Motion, the court continued the matter to September 11, 201, at 3:00p.m.Dckt. 47.

TRUSTEE’S AMENDED RESPONSE

Trustee filed an Amended Response to Debtor’s Motion on August 28, 2018. Dckt. 53. Trustee asserts that Creditor filed Proof of Claim, No. 3-2, on July 20, 2018, reflecting a secured portion of \$4,500.00 and unsecured portion of \$5,873.67. As a result of Creditor’s apparent nonopposition, the Trustee no longer opposes this Motion.

DEBTOR’S AMENDED DECLARATION OF PETER MACALUSO

Debtor filed Debtor’s Amended Declaration on September 4, 2018. Dckt. 58. The Amended Declaration remedies the required attestation to comply with 11 U.S.C. § 1746.

DISCUSSION

Creditor values its secured claim at \$4,500.00. Proof of Claim, No. 3-2. The lien on the Vehicle’s title secures a purchase-money loan incurred on March 12, 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 \$10,764.17. 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 \$4,500.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted. The 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 Randy Michael Acheson and Graciela Caldera Acheson (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Safe Credit Union (“Creditor”) secured by an asset described as a 2007 Dodge Ram (“Vehicle”) is determined to be a secured claim in the amount of \$4,500.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$4,500.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.