

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

October 20, 2020 at 2:00 p.m.

1.	<u>20-23800-E-13</u> <u>DPC-1</u>	JOHN/SUSAN MEDCALF Seth Hanson	OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 9-23-20 [25]
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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

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 September 23, 2020. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). 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 -----
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The Objection to Confirmation of Plan is overruled.

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

- A. Debtor failed to submit proof of his social security number.
- B. Debtor failed to provide pay advices.

DISCUSSION

Trustee's objections are well-taken.

Failure to Provide Proof of Social Security Number

Debtor did not provide proof of his social security number to the Trustee at the Meeting of the Creditors. *See* FED. R. BANKR. P. 4002(b)(1). Debtor has failed to submit proof of his social security number. Therefore, Debtors have failed to cooperate with Trustee as necessary to enable the Trustee to perform his duties. *See* 11 U.S.C. § 521(a)(3).

Debtor filed a response to Objection to Confirmation of the Chapter 13 plan on October 1, 2020. Dckt. 29. In response, Debtor claims that the Trustee has been provided with proof of his social security number.

At the hearing, xxxxxxxxxxxxxx.

Failure to Provide Pay Stubs / Pay Advices

Debtor has not provided Trustee with employer payment advices for the sixty-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv); FED. R. BANKR. P. 4002(b)(2)(A). While Debtor has provided some pay stubs, Debtor has failed to provide all necessary pay stubs. That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

In response, Debtor asserts that Trustee has been provided the pay stubs. Dckt. 29.

At the hearing, xxxxxxxxxxxxxx.

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

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

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

~~**IT IS ORDERED** that the Objection is overruled, and John Clyde Medcalf and Susan Shellooe Medcalf ("Debtor") Chapter 13 Plan filed on August 4, 2020, is confirmed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13~~

~~Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

2. [20-23901](#)-E-13 **WENDY MORGAN**
[MOH-2](#) **Michael Hays**

**CONTINUED MOTION TO SELL
AND/OR MOTION FOR
COMPENSATION FOR
BERKSHIRE HATHAWAY HOME
SERVICES ELITE REALTY,
BROKER(S)
9-15-20 [38]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 15, 2020. By the court's calculation, 14 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

Movant filed a Motion to Shorten Time on September 15, 2020. Dckt. 37. The court granted the Motion and the Motion was set for hearing on September 29, 2020. Dckt. 44.

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

The Motion to Sell Property is XXXXX.

The Bankruptcy Code permits Wendy Kristine Morgan, the Debtor, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here, Movant proposes to sell the real property commonly known as 00 Dunstone Drive (Lot 44 APN 028-430-002-000), Oroville, California ("Property").

Trustee filed a Response stating non-opposition based on the apparent value of the Property and the sales price of \$140,000. Dckt. 47. While it would appear that the Debtor's exemption would

exhaust the equity in the Property, the First Meeting of Creditors has not been completed and the exemptions are not final and locked in at this time.

The Trustee also notes that the proposed Chapter 13 Plan provides for paying the claim secured by the Property through the Plan. However, if the Property is sold, and presumably the claim paid through escrow, the Trustee questions whether the Plan provision will be proper.

Debtor's Supplemental Document

On September 24, 2020 Debtor submitted a supplemental document updating the court as to the status of the sale. Dckt. 49. Debtor informs the court that the original purchaser has withdrawn their offer. However, there is a new buyer. The proposed purchaser of the property is Jose Manuel Diaz, with the following terms of sale:

- A. The purchase price is \$140,000.00 with a thirty (30) day escrow.
- B. Buyer shall pay \$100,000.00 into escrow and a \$40,000.00 loan to be make by Debtor Seller.
- C. Seller and Buyer shall each pay 50% of the escrow fee and both shall pay for the owner's title insurance policy.
- D. Seller shall pay the City, County, and any private transfer tax or fee.

Debtor notes that the Trustee may not find the instant offer feasible, and further notes that assuming a claim in the amount of \$93,605.99 is filed, then perhaps the buyer would agree to an extension of the escrow and an increase in the down payment and suggests the matter be continued to after the deadline for filing claims, to October 20, 2020 to consider the filed claims.

The new Purchase Agreement identifies the Seller financing to be a \$40,000 loan, with 7% interest "for 12 yrs." Revised Sale Information, Purchase Agreement ¶ 3.D.; Dckt. 49. It is not clear if this is a twelve year amortized loan, interest only loan, or a "due only after the plan term ends" loan. If the Debtor's exemption exhausts the value of the proceeds, such may not matter to creditors (except to the extent that the delayed payment results in projected disposable income from being paid into the Plan).

DISCUSSION

Movant has provided that the broker's commission from the sale of the Property will equal approximately \$10,000.00 with \$5,000.00 to Buyer's broker and \$5,000 to the Seller's broker. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker an amount not more than \$10,000.00.

With a sales price of \$140,000, a \$10,000 broker's commission would be equal to 7%. That is higher than the normal 6% residential real estate commission and higher than commissions for sales of undeveloped property. Again, given the sales price and the Debtor's exemption amount, such may not negatively impact creditors, but just the Debtor in decreasing his exempt proceeds.

At the hearing counsel for the Debtor reported that Creditor will be filing a claim and requests the hearing be continued.

October 20, 2020 Hearing

At the time of the court's preparation of this tentative ruling no further documents had been filed by Debtor or any other party.

At the hearing, **xxxxxxxxxxxxxxxxxx**.

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

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

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

IT IS ORDERED that Motion to Sell Property is **xxxxx**.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on September 24, 2020. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing -----
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**The hearing on the Objection to Confirmation of Plan is continued to 2:00 p.m.
on November 10, 2020.**

Umpqua Bank, its successors and/or assignees in interest ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

- A. Creditor's interest rate is outside the limits authorized by the Supreme Court.
- B. The Plan does not propose to cure the pre-petition arrearage.
- C. Debtor has failed to provide an accounting of the inventory on the property and of the cash collateral.
- D. Meeting of Creditors has been continued.

DISCUSSION

Creditor's objections are well-taken.

Interest Rate

Creditor objects to the confirmation of the Plan on the basis that the Plan calls for adjusting the interest rate on its loan with Debtor to 4.00%. Creditor's claim is secured by real property commonly known as 609 7th St., Williams, California, 95987. Creditor argues that this interest rate is outside the limits authorized by the Supreme Court in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). Adding that the interest rate should be increased to protect its interest as Lender's loan matured over a year ago. Creditor further contends that Debtor is apparently operating a business on the Property, and Lender has an interest in rents and profits generated by the Property but has not received an accounting.

In *Till*, a plurality of the Court supported the "formula approach" for fixing post-petition interest rates. *Id.* Courts in this district have interpreted *Till* to require the use of the formula approach. See *In re Cachu*, 321 B.R. 716 (Bankr. E.D. Cal. 2005); see also *Bank of Montreal v. Official Comm. of Unsecured Creditors (In re American Homepatient, Inc.)*, 420 F.3d 559, 566 (6th Cir. 2005) (*Till* treated as a decision of the Court). Even before *Till*, the Ninth Circuit had a preference for the formula approach. See *Cachu*, 321 B.R. at 719 (citing *In re Fowler*, 903 F.2d 694 (9th Cir. 1990)).

The court agrees with the court in *Cachu* that the correct valuation of the interest rate is the prime rate in effect at the commencement of this case plus a risk adjustment. It appears that a computation computed based on an interest rate as the prime rate in effect at the commencement of the case, 3.25%, plus a 1.25% risk adjustment, for a 4.50% interest rate. This would increase the monthly payment to \$4,108.72, fifty dollars a month (\$50) over what Debtor has proposed. Over sixty months of the plan, this is an additional \$3,000 interest income for Creditor. ^{FN.1.}

FN. 1. Creditor filed Proof of Claim No. 5-1. The Proof of Claim states that the \$220,389.29 claim is fully secured. The collateral is stated to be Debtor's principal residence. Further, that this obligation has been due in full since April 5, 2019.

Attached to Proof of Claim No. 5-1 is a UCC-1 Financing Statement for which there is additional collateral securing the claim. The additional collateral described in the UCC-1 include:

[2].1 All accounts. chattel Paper, contracts for sale. deposit accounts. documents. documents of title, contract rights, general intangibles, payment intangibles, letters of credit, goods. instruments and assumed business names of Grantor relating to the Premises; 2.2 All equipment, inventory, furnishings, appliances, machinery, tools. building materials, supplies, maintenance or service equipment and other raw materials or supplies,. component parts and work in progress pertaining to the Premises; 2.3 All warranties. licenses. franchises, plats. as-built plans, approvals, permits, drawings, specifications and construction contracts relating to the Premises or Grantor's business operations on the Premises; 2.4 All commercial tort claims with respect to the Premises and other legal and equitable claims, judgments and awards now or hereafter accruing to the benefit of Grantor and/or the Premises; 2.5 All bonding, construction, development, financing, guaranty,

indemnity, maintenance, management, service, supply and warranty agreements, commitments, contracts, subcontracts, reports, studies, agreements; insurance policies and bonds relating to the Premises; 2.6 All deposits, reserves, prepayments, deferred payments, rebates, refunds and returns of money or property paid to or deposited with any governmental body, agency or authority, any Public or Private utility, district or company, insurance companies, or any other Person in connection with the Premises. 3. INCOME FROM OPERATIONS. All leases, rental agreements, income, room rates, revenues, rents, issues, profits, accounts, accounts receivable, security deposits, rent deposits, general intangibles, contract rights or any other revenues related to the Premises or generated from operations conducted on the Premises, whether now or hereafter existing and whether characterized as being derived from real or personal property, including, without limitation, income from inventory sales, tenant or guest occupancy of the Premises, personal services, amenities, concessions, vendors, food and bar services.; whether any of the foregoing is owned now or acquired later: all accessions, additions, replacements, and substitutions relating to any of the foregoing; all records of any kind relating to any of the foregoing; all proceeds relating to any of the foregoing (including Insurance, general intangibles and accounts proceeds).

Debtor lists this claim being a fully secured claim based on a junior deed of trust recorded against real property.

Understated Amount of Claim

Creditor includes in the Objection that the Plan states the secured claim to be \$219,000, but Creditor computes its claim to be \$220,389.29. Objection, p. 5:1-4; Dckt. 24.

Creditor's proof of claim controls, unless the court has entered an order stating a different amount, as to the claim that has to be paid. Plan § 2.01; Dckt. 2. While small in dollar amount, Creditor including this information in the Objection insures that the feasibility of the plan - Debtor's ability to pay - is considered.

Failure to Provide Accounting

The objecting creditor claims that it has an interest in cash collateral generated by the Property. Objecting creditor requested an accounting of the inventory on the Property and an accounting of the cash collateral. Creditor has not yet received this information.

Debtor filed a response on October 6, 2020. Dckt. 30. Debtor asserts that the equipment and inventory are listed in Schedule A/B and an accounting of rents and profits are listed in Schedule I. Further, Debtor asserts that if Creditor would like a "further breakdown, the Debtors can certainly provide one." *Id.*

The Parties can determine whether, if not otherwise provided, the information will be obtained through a 2004 Examination, and whether it must be completed prior to confirmation.

Meeting of Creditors has been Continued

The Chapter 13 trustee has continued the Meeting of Creditors to October 22, 2020. Thus, Creditor requests that the Plan not be considered until after the meeting of creditors is completed.

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 Umpqua Bank, its successors and/or assignees in interest (“Creditor”) holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Objection to Confirmation of Plan is continued to 2:00 p.m. on November 10, 2020.

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the 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 September 23, 2020. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). 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 -----
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The Objection to Confirmation of Plan is sustained.
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The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that:

- A. The Plan fails the liquidation analysis.
- B. Debtor failed to list payment to Debtor's Attorney.
- C. Debtor completed an unauthorized sale of estate property.

DISCUSSION

Trustee's objections are well-taken.

Debtor Fails Liquidation Analysis

Debtor's plan fails the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). Trustee states that Debtor's non-exempt equity totals \$118,481.71 which is primarily for \$1,702, household goods, \$420.00 monies in bank accounts, and \$116,359.71 in retirement. The Plan proposes to pay a 0% dividend to unsecured claims. Thus, Debtor fails the Chapter 7 Liquidation Analysis.

Debtor Failed to List Payment of Debtor's Attorney

Trustee reports that Debtor failed to disclose a prior payment made to Debtor's Attorney. 11 U.S.C. § 1325(a)(1) provides for confirmation of a plan if it complies with Chapter 13 provisions and other applicable Code provisions. Here, Debtor did not list that his attorney was paid \$2,500.00 prior to the filing of the Voluntary Petition. Therefore, Trustee must oppose a "No Look" fee unless (1) the Debtor amends the Statement of Financial Affairs to list the attorney and the \$2,500.00 amount paid, or (2) the Attorney disclosure statement is corrected if the \$2,500.00 fee was not paid.

Debtor Completed an Unauthorized Sale of Estate Property

Trustee also opposes confirmation of the plan on the basis that a possible unauthorized transfer of estate property took place that is subject to avoidance under 11 U.S.C. § 549(a). Debtor admitted at the Meeting of Creditors that he sold a 1970 Chevrolet for \$20,000.00 on September 15, 2020. The petition was filed on August 11, 2020. Therefore, Trustee asserts that Debtor is not seeking confirmation of the plan in good faith nor is Debtor complying with the plan. 11 U.S.C. §§ 1325(a)(3) and 1325(a)(6). ^{FN.1.}

FN. 1. This is Debtor's third recent bankruptcy case with the following two prior cases: Chapter 13 case 19-25521 filed on September 1, 2019, and dismissed on January 17, 2020; and Chapter 13 case 20-20825, filed on February 13, 2020, and dismissed on July 1, 2020.

If there is an avoidable post-petition transfer, the fiduciary obligations of the Debtor to avoid that transfer and preserve such avoided transfer for the benefit of the bankruptcy estate (and not the Debtor) raise significant fiduciary duty issues for Debtor and action to be taken. 11 U.S.C. §§ 549, 551

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

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

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

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

IT IS ORDERED that the Objection to Confirmation of the Plan is

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

5. [18-22505-E-13](#) **OSIRIS HENDERSON** **MOTION TO MODIFY PLAN**
[GEL-3](#) **Gabriel Liberman** **9-11-20 [84]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 11, 2020. By the court's calculation, 39 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is granted.
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The debtor, Osiris Lemar Henderson ("Debtor") seeks confirmation of the Modified Plan to cure the Debtor's delinquency. Dckt. 84. The Modified Plan provides for monthly plan payments of \$5,177.00 for 32 months, and a 0 percent dividend to unsecured claims totaling \$213,169.00. Modified Plan, Dckt. 90. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on October 6, 2020. Dckt. 96. Trustee opposes confirmation of the Plan on the basis that:

A. The post-petition arrearage amounts are incorrect.

DISCUSSION

Cannot Comply with the Plan

Trustee asserts that he is unable to comply with § 3.07(b) of the Plan. Trustee reports that the amount of \$4,568.98 owed to Carrington Mortgage Services, LLC for post-petition arrears and the amount of \$1,803.20 owed to Ocwen Loan Servicing, LLC for post-petition arrears are incorrect. Trustee asserts that she would not oppose confirmation of the modified plan if the post-petition arrearage amounts were corrected.

Debtor filed a response to Trustee's Limited Opposition on October 8, 2020. Dckt. 99. Debtor initially proposed a higher amount owed to two Class 1 claimants: Carrington Mortgage Services, LLC and Ocwen Loan Servicing, LLC. Debtor agrees to correct the post-petition contract installments in the confirmation to Carrington Mortgage Services, LLC from \$4,568.98 to \$2,284.69, which reduces the monthly dividend payment from \$145.75 to \$71.60 and Ocwen Loan Servicing, LLC from \$1,803.20 to \$901.60 which reduces the monthly dividend from \$56.35 to \$28.18. *Id.*, at 2.

Thus, this objection is resolved in favor of the Debtor.

The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Osiris Lemar Henderson ("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 September 11, 2020, amended to provide as follows:

post-petition contract installments to Carrington Mortgage Services, LLC from \$4,568.98 to \$2,284.69, which reduces the monthly dividend payment from \$145.75 to \$71.60 and Ocwen Loan Servicing, LLC from \$1,803.20 to \$901.60 which reduces the monthly dividend from \$56.35 to \$28.18

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor on October 6, 2020. By the court’s calculation, 14 days’ notice was provided. 14 days’ notice is required.

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

The Motion to Value Collateral and Secured Claim of One Main Financial Group, LLC (“Creditor”) is granted, and Creditor’s secured claim is determined to have a value of \$5,090.00.

The Motion filed by Shelly Kay Deshan (“Debtor”) to value the secured claim of One Main Financial Group, LLC (“Creditor”) is accompanied by Debtor’s declaration. Declaration, Dckt. 21. Debtor is the owner of a 2007 Nissan Murano, V6 (“Vehicle”). Debtor seeks to value the Vehicle at a replacement value of \$5,090.00 as of the petition filing date. As the owner, Debtor’s opinion of value is evidence of the asset’s value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

DISCUSSION

The lien on the Vehicle’s title secures a purchase-money loan incurred on December 7, 2018, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$19,772.40. Proof of Claim, No. 2. 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 \$5,090.00, 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 Shelly Kay Deshan (“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 One Main Financial Group, LLC (“Creditor”) secured by an asset described as 2007 Nissan Murano, V6 (“Vehicle”) is determined to be a secured claim in the amount of \$5,090.00, 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 \$5,090.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 21, 2020. By the court’s calculation, 35 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

The Motion to Confirm the Amended 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 Amended Plan is XXXXX.
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The debtor, Ignacio Gonzalez Lopez (“Debtor”), seeks confirmation of the Amended Plan. The Amended Plan provides for monthly plan payments of \$4,130.00 commencing August 2020 through month 60, and a 100 percent dividend for unsecured claims totaling \$21,000.00. Amended Plan, Dckt. 167. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on August 3, 2020. Dckt. 179. Trustee opposes confirmation of the Plan on the basis that:

- A. Class 1 creditor may have received double payments.
- B. Total amount paid into the Plan is incorrect.

DISCUSSION

Class 1 Creditor

The Non-Standard Provisions of the proposed Plan state in part: “The Payment to US Bank in class 1 shall commence in August, 2020 through month 60 because debtor has made direct payments to US Bank from filing date through July, 2020.”

According to Trustee, his records show having paid a total of \$28,715.04 in mortgage payments to US Bank Home Mortgage. The Debtor’s Declaration and the non-standard provisions do not specify the months Debtor paid US Bank directly, Thus, it appears that this creditor may have received duplicate payments.

Total Amount Paid into the Plan

Debtor’s Non-Standard provisions states Debtor has paid a total of \$41,370, where Trustee’s records show that Debtor has paid a total of \$43,550.00 into the Plan. Trustee would not object to correcting the total amount in the order confirming plan.

At the hearing, the Trustee concurred with a continuance to allow for the Debtor to propose necessary amendments to the plan in this case.

Debtor’s Status Report

On September 22, 2020, Debtor filed a Status Report informing the court that Trustee and Debtor have reached a solution for the language of the proposed Order confirming the Plan, which is now waiting for the approval of secured creditor’s attorney. Dckt. 190. Debtor expects the proposed order to be filed prior to the continued hearing.

September 29, 2020 Hearing

At the hearing, neither Counsel for Trustee nor counsel for the Trustee could tell the court the language that was to be included in the order confirming the plan. The court continued the hearing to allow them time to document and become aware of such language.

October 20, 2020 Hearing

As of the court’s review of the docket at the time of drafting this tentative ruling, no further documents have been filed with the court.

At the hearing, **XXXXXXXXXXXXXXXXXX**.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 7, 2020. By the court's calculation, 43 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).

<p>The Motion to Confirm the Amended Plan is granted.</p>
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The debtor, Heidi Francis Adcock Arasomwan ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for monthly plan payments of \$2,772.00 for four (4) months and monthly plan payments of \$2,885.00 for 56 months and a 0 percent dividend to unsecured claims totaling \$123,688.00. Amended Plan, Dckt. 34. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on October 6, 2020. Dckt. 50. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor is delinquent in plan payments.
- B. The Plan contains an improper modification of a claim secured by Debtor's primary residence.

DISCUSSION

Delinquency

The Chapter 13 Trustee asserts that Debtor is \$5,657.00 delinquent in plan payments, which represents multiple months of the \$2,772.00 plan payment. 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 filed a Reply on October 14, 2020 asserting that a payment of \$2,772.00 was made to the Trustee and another payment of \$2,885.00 will be made on October 16, 2020 to cure the remaining delinquency. Dckt. 56.

At the hearing, xxxxxxxxxxxxxxxx.

Modification of an Obligation Secured Only by Principal Residence

Creditor argues that Debtor's Plan is an improper modification of a claim secured only by a security interest in real property that is Debtor's principal residence because the Enslinger Provisions have been altered.

Creditor has filed a Proof of Claim indicating a secured claim in the amount of \$473,397.61, secured by a deed of trust against the property commonly known as 170 Aviator Circle, Sacramento, California. Debtor's Schedules indicate that this is Debtor's primary residence. This modification violates 11 U.S.C. § 1322(b)(2), which prohibits the modification of an obligation secured only by Debtor's residence.

In the Reply, Debtor requests the court to authorize the following "Enslinger Provisions" as proposed by the Trustee and to be inserted in the Order Confirming this Plan:

7.02.1 Secured Claim Treatment

Confirmation of this plan provides for adequate protection of New Rez LLC dba Shellpoint Mortgage Servicing's interest in the collateral pending either the consensual modification of the Secured Claim or termination of the automatic stay and surrender of the Collateral as provided in Section 7.02. Confirmation of the Plan does not modify the secured claim of New Rez dba Shellpoint Mortgage Servicing.

Upon denial of a loan modification and Debtor's failure to timely file and serve a proposed modified plan and motion to confirm as provided in this Section 7.02, the treatment of New Rez LLC dba Shellpoint Mortgage Servicing's secured claim is:

- A. New Rez LLC dba Shellpoint Mortgage Servicing's secured claim is a Class 3 Claim, with the added requirement that an

order modifying the automatic stay must be obtained (which order documents that the denial of loan modification condition subsequent has occurred);

- B. The Chapter 13 Trustee shall continue to make the adequate protection payments to Secured Creditor from the regular monthly plan payments made by Debtor under this Plan until terminated by:
1. Debtor filing and serving a modified plan and motion to confirm which provides for other treatment of New Rez LLC dba Shellpoint Mortgage Servicing's secured claim.
 2. The Court enters an order modifying the automatic stay as provided in this Section 7.02 or
 3. Order further order of the court.

The proposed Plan provides in ¶ 7.03 for the payment of a monthly adequate protection payment of \$2,238.00.

At the hearing, **XXXXXXX**

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

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

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

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

~~_____ **IT IS ORDERED** that the Motion is granted, and Debtor's Amended Chapter 13 Plan filed on September 7, 2020, as amended:~~

~~_____ **7.02.1 Secured Claim Treatment**~~

~~_____ Confirmation of this plan provides for adequate protection of New Rez LLC dba Shellpoint Mortgage Servicing's interest in the collateral pending either the consensual modification of the Secured Claim or termination of the automatic stay and surrender of the Collateral as provided in Section 7.02. Confirmation of the Plan does not modify the secured claim of New Rez dba Shellpoint Mortgage Servicing.~~

____ Upon denial of a loan modification and Debtor's failure to timely file and serve a proposed modified plan and motion to confirm as provided in this Section 7.02, the treatment of New Rez LLC dba Shellpoint Mortgage Servicing's secured claim is:

____ A. New Rez LLC dba Shellpoint Mortgage Servicing's secured claim is a Class 3 Claim, with the added requirement that an order modifying the automatic stay must be obtained (which order documents that the denial of loan modification condition subsequent has occurred);

____ B. The Chapter 13 Trustee shall continue to make the adequate protection payments to Secured Creditor from the regular monthly plan payments made by Debtor under this Plan until terminated by:

____ 1. Debtor filing and serving a modified plan and motion to confirm which provides for other treatment of New Rez LLC dba Shellpoint Mortgage Servicing's secured claim.

____ 2. The Court enters an order modifying the automatic stay as provided in this Section 7.02 or

____ 3. Order further order of the court.

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

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

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 26, 2020. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

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

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

- A. Debtor failed to appear at the First Meeting of Creditors.

DISCUSSION

Trustee's objections are well-taken.

Failure to Appear at 341 Meeting

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).

Continuance of September 15, 2020 Hearing

The Trustee reports that the First Meeting of Creditors has been continued to September 17, 2020. Debtor has no other bankruptcy filings in this District and there is nothing to indicate that Debtor and her counsel are not working to diligently prosecute this case. To save Debtor, Debtor's counsel, and the Trustee from having to appear on September 15, 2020 for the court to continue the hearing to afford Debtor the opportunity to attend the continued Meeting of Creditors, the court issues this final ruling continuing the hearing on the Objection to Confirmation in light of the only grounds for the Objection (at this point in time) being Debtor not attending the originally scheduled First Meeting of Creditors.

September 29, 2020 Hearing

Trustee filed Trustee's Report at 341 Meeting on September 17, 2020. Trustee's September 17, 2020 Docket Entry Statement. Trustee reports that Debtor failed to appear at the Meeting of Creditors. The meeting was continued to October 8, 2020 at 1:00 p.m.

At the hearing, counsel for the Trustee reported that Debtor is current and that the hearing should be confirmed. Debtor's counsel reported that Debtor did appear and the 341 meeting has been concluded. The court continues the hearing to allow the Trustee to review his records and dismiss this Objection if the hearing is concluded and no objection exists.

October 20, 2020 Hearing

As of the court's review of the docket at the time of drafting this tentative ruling, no further documents have been filed with the court. However, the Trustee's Report for the Second Continued First Meeting of Creditors states that Debtor again failed to appear at the October 8, 2020 continued Meeting.

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

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

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

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

IT IS ORDERED that the Objection is sustained, and the 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 3007-1 Objection to Claim—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Debtor, and Debtor's Attorney, on August 27, 2020. By the court's calculation, 54 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). The defaults of the non-responding parties and other parties in interest are entered.

The Objection to Amended Proof of Claim Number 8-2 for Elite Acceptance Corporation is sustained and the Amended Claim is disallowed.

David P. Cusick, the Chapter 13 Trustee, ("Objector") requests that the court disallow the claim of Elite Acceptance Corporation ("Creditor"), Proof of Claim No. 8 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of \$13,353.00. Objector asserts that:

- A. Debtor's Attorney cannot file an amended claim on behalf of the Creditor.
- B. Debtor's Attorney has filed a duplicate claim filed previously by the Creditor.
- C. Debtor fails to provide sufficient documentation supporting the claim.

DISCUSSION

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim

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

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

The deadline for filing a proof of claim in this matter was October 29, 2019. Creditor's Proof of Claim was filed on July 15, 2020. No order granting relief for an untimely-filed proof of claim for Creditor has been issued by the court. According to Debtor, the deadline for Debtor to file claims on behalf of creditors was August 1, 2020. Dckt. 132.

Debtor's Reply

Debtor wishes to pay this creditor as a secured claim through his Chapter 13 Plan. In his Reply to the Objection, Debtor states that as Creditor's claim was late filed, and therefore invalid, Debtor's counsel filed a claim on behalf of Creditor in order for the claim to be paid per the terms of the Chapter 13 plan. Dckt. 132. Adding that Debtor is not opposed to the disallowance of Claim #8, so long as either Claim #7 (filed by Creditor) or Claim #8 (filed on behalf of Creditor by Debtor's attorney) be allowed as a secured claim.

DISALLOWANCE OF PURPORTED AMENDED CLAIM

Creditor filed Proof of Claim No. 7-1 on July 15, 2020, approximately nine months late. Though filed late, no objection to such Proof of Claim has been filed. Paragraph 2.01 of the Plan provides that a creditor's claim will not be paid unless "a proof of claim is filed . . ." Interestingly, the word "timely" is not included in this Plan provision. The court has not conducted research on the issue of the effect of an untimely, but unobjected to, secured claim for purposes of the Chapter 13 Plan.

Then untimely Proof of Claim No. 8-1 was filed by Debtor on July 31, 2020 - well after the deadline for Debtor filing a proof of claim for a creditor who has not filed such a claim. Debtor then filed, later on July 31, 2020, an Amended Proof of Claim No. 8-2, purporting to amend the untimely Proof of Claim No. 8-1.

The deadline for filing proofs of claim in this case expired on October 29, 2019. Dckt. 10 at § 8, deadlines. Federal Rule of Bankruptcy Procedure 3004 affords the Debtor and Trustee the ability to file a proof of claim within 30 days of the expiration of the deadline to file if the creditor has not filed a claim. That thirty-day period expired on November 28, 2019.

It appears that a human error occurred with respect to a debtor or trustee filed proof of claim not being filed for the secured claim of Elite Acceptance Corporation for which Debtor's vehicle is the collateral. Debtor's confirmed Chapter 13 Plan provides for paying this secured claim. Amended Plan,

Though the failure to file a proof of claim does not deprive the creditor of its secured claim and collateral, it appears that the Trustee may be asserting the need for a timely secured claim having been filed, notwithstanding on objection has been made to Proof of Claim No. 7-1 which was untimely filed, for making payments under the confirmed plan.

Unfortunately, rather than seeking leave to file a late claim or for an order confirming that the Chapter 13 Trustee make plan distributions thereon, Debtor chose to unilaterally file the claim, appearing to having granted itself such relief rather than seeking it from the court.

The Objection to Proof of Claim No. 8-1 and Amended Proof of Claim No. 8-2 (to the extent the untimely claim could be amended) is sustained and disallowed, without prejudice.

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 Proof of Claim 8-1 and Amended Proof of Claim No. 8-2 filed by Debtor for Elite Acceptance Corporation (the Creditor holding a secured claim), filed in this case by David P. Cusick, the Chapter 13 Trustee, (“Objector”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is sustained and Proof of Claim Number 8-1 filed by the Debtor and Amended Proof of Claim No. 8-1 are sustained in their entity that such are disallowed, without prejudice.

IT IS FURTHER ORDERED that this order is additionally without prejudice to existing Proof of Claim 7-1 filed by Elite Acceptance Corporation on July 15, 2020, for a secured claim, for which no objection has been filed and which has not been disallowed by the court; the obligation owed thereunder; or the effect of such unobjected to Proof of Claim filed in this case.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 21, 2020. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

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

<p>The Motion to Incur Debt is granted.</p>
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The Motion to Approve Loan Modification filed by David Rynda (“Debtor”) seeks court approval for Debtor to incur post-petition credit for a new refinance of real property commonly known as 9436 Windrunner Lane, Elk Grove, California (“Property”). Socotra Capital (“Creditor”), has proposed to Debtor an interest only loan for \$225,000 with a term of two years at an 11.87 interest rate.

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, “including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions.” FED. R. BANKR. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

DISCUSSION

This post-petition financing is consistent with the Settlement Agreement approved by this court in order to settle the Adversary Proceeding between Debtor and Elina Machado. No objection from the Chapter 13 Trustee or other parties in interest has been filed.

Debtor's Best Interest

Here, the transaction may not be in the best interest of Debtor. The loan calls for a high interest charge and an almost immediate repayment—11.87% with the loan being due in full in two years. It is unclear to the court how in good faith Debtor could propose to borrow up to \$225,000 against the Property which will be due in full in two years with hopes that “the market will be higher.” Moreover, Debtor states that he will borrow any funds he is lacking to close escrow from his sister.

The court is also concerned with the related settlement agreement for the attorney's fees of Debtor's Counsel. Exhibit D, Dckt. 342. Debtor and Counsel have settled their dispute over attorney's fees where Debtor has agreed to provide Counsel with a lien to be recorded at close of escrow to ensure he is paid \$32,000 as soon as Debtor is able to sell the Property in the near future. *Id.* at 3.

The Settlement Agreement states that Debtor will place the Property on the market as soon as he is able to evict all current occupants and “make it presentable for, which will be within one year of the date this agreement is executed.” *Id.*

Notwithstanding the above concerns, this is a very unusual case. Debtor cannot prosecute a bankruptcy plan - other than selling the Property that will secure this loan. Debtor has been able to acquire clear title to this Property through a settlement. While this is an expensive loan, Debtor has invested very little to acquire the Property.

The Debtor, represented by counsel desiring the loan, the loan apparently being necessary for Debtor to consummate the settlement by which he acquires clear title to the property. This is the Debtor's business judgment, and the court grants the Motion.

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

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

The Motion to Incur Debt filed by David Rynda (“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 is authorized to incur debt on the terms and conditions set forth in Exhibit A, the Loan Offer and Acceptance Agreement, Dckt. 339.

Final Ruling: No appearance at the October 20, 2020 hearing is required.

Local Rule 9014-1(f)(3) Motion – Final Hearing—No Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, and Office of the United States Trustee on October 2, 2020. By the court’s calculation, 18 days’ notice was provided. The court set the hearing for October 20, 2020. Dckt. 344.

The Motion for Allowance of Professional Fees 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.

The Motion for Allowance of Professional Fees is granted.

Tracy L. Wood, the Attorney (“Applicant”) for David Jerome Rynda, the Chapter 13 Debtor (“Client”), makes a Request for the Allowance of Fees and Expenses in this case.

Through this Motion, fees were requested for the period December 12, 2018 through April 29, 2020 Applicant requests fees and expenses in the total amount of \$30,537.25, with fees in the amount of \$25,916.00 plus \$4,000 for the Chapter 13 base fee, and costs in the amount of \$221.25.

APPLICABLE LAW

For Chapter 13 bankruptcy cases, Local Bankruptcy Rule 2016-1 provides, in pertinent part, the following for the allowance of reasonable attorney’s fees for counsel representing a debtor. An attorney and client may elect for the attorney to be paid a flat (“no-look”) fee of up to \$4,000.00 in nonbusiness cases and \$6,000.00 in cases in which the individual debtor has business obligations and assets. L.B.R. 2016-1(c). The approval of the no-look fee is made in the order confirming the Chapter 13 plan. *Id.* The attorney and client can opt-out of the no-look fee and have the attorney’s fees and costs allowed as otherwise permitted under 11 U.S.C. §§ 300, 331. L.B.R. 2016(a).

If the attorney and client elect the no-look fee for the services relating to the Chapter 13 case, the attorney is allowed additional compensation beyond the scope of the no-look fees. *See*, L.B.R. 2016-1(c)(3).

The fee election is stated in the Rights and Responsibilities signed by the attorney and debtor filed in the bankruptcy case. L.B.R. 2016-1(a).

The Rights and Responsibilities document filed by Debtor and Applicant in this case states with respect to fees:

Initial fees charged in this case are \$ 4,500.00, and of this amount, \$ 0.00 was paid by the Debtor before the filing of the petition. While this initial fee should be sufficient to fully and fairly compensate counsel for all pre-confirmation services and most post-confirmation services rendered in the case, where substantial and unanticipated post-confirmation work is necessary, the attorney may request that the court approve additional fees. If additional fees are approved, they shall be paid through the plan by the chapter 13 trustee unless otherwise ordered. The attorney may not receive fees directly from the Debtor.

Dckt. 14.

The scope of pre-petition, post-filing, confirmation, and post-confirmation services are the standard ones expected, and do not include adversary quite title litigation. However, they do include confirmation of a plan, entry of a discharge (if the debtor is eligible), and closing of the case. *Id.*

Statutory Basis For Allowance of Fees

Congress provides in 11 U.S.C. § 329 that the bankruptcy court shall determine whether fees charged by an attorney for a debtor are reasonable. For a Chapter 13 case, Local Bankruptcy Rule 2016-1 provides the vehicle for the court making that determination and sets some per se allowable amounts (which are always subject to a case by case review if appropriate).

Using the provisions of 11 U.S.C. § 330 in determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

- (i) unnecessary duplication of services; or
- (ii) services that were not—

- (I) reasonably likely to benefit the debtor's estate;
- (II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). An attorney must “demonstrate only that the services were reasonably likely to benefit the estate at the time rendered,” not that the services resulted in actual, compensable, material benefits to the estate. *Ferrette & Slatter v. United States Tr. (In re Garcia)*, 335 B.R. 717, 724 (B.A.P. 9th Cir. 2005) (citing *Roberts, Sheridan & Kotel, P.C. v. Bergen Brunswig Drug Co. (In re Mednet)*, 251 B.R. 103, 108 (B.A.P. 9th Cir. 2000)). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

Reasonable Fees

A bankruptcy court determines whether requested fees are reasonable by examining the circumstances of the attorney’s services, the manner in which services were performed, and the results of the services, by asking:

- A. Were the services authorized?
- B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?
- C. Are the services documented adequately?
- D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?
- E. Did the attorney exercise reasonable billing judgment?

In re Garcia, 335 B.R. at 724 (citing *In re Mednet*, 251 B.R. at 108; *Leichty v. Neary (In re Strand)*, 375 F.3d 854, 860 (9th Cir. 2004)).

Reasonable Billing Judgment

Even if the court finds that the services billed by an attorney are “actual,” meaning that the fee application reflects time entries properly charged for services, the attorney must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors’ Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the services provided because the court’s authorization to employ an attorney to work in a bankruptcy case does not give that attorney “free reign to run up a [fees and expenses] tab without considering the maximum probable recovery,” as opposed to a possible recovery. *Id.*; see also *Brosio v. Deutsche Bank Nat’l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) (“Billing judgment is mandatory.”). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney is obligated to consider:

- (a) Is the burden of the probable cost of legal services disproportionately large in relation to the size of the estate and maximum probable recovery?
- (b) To what extent will the estate suffer if the services are not rendered?
- (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

In re Puget Sound Plywood, 924 F.2d at 958–59 (citing *In re Wildman*, 72 B.R. 700, 707 (N.D. Ill. 1987)).

A review of the application shows that Applicant’s services for the Estate include defense of a motion for relief from the automatic stay, preparing and filing several plans and motions to confirm plans, prosecuting an adversary proceeding, and general case administration. The court finds the services were beneficial to Client and the Estate and were reasonable.

Lodestar Analysis

If Applicant has opted out of the no-look fee or there are substantial and unanticipated legal services that have been provided, then such additional fees may be requested as provided in Local Bankruptcy Rule 2016-1(c)(3). The attorney may file a fee application, and the court will consider the fees to be awarded pursuant to 11 U.S.C. §§ 329, 330, and 331. For bankruptcy cases in the Ninth Circuit, “the primary method” to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves “multiplying the number of hours reasonably expended by a reasonable hourly rate.” *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). “This calculation provides an objective basis on which to make an initial estimate of the value of a lawyer’s services.” *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). A compensation award based on the lodestar is a presumptively reasonable fee. *In re Manoa Fin. Co.*, 853 F.2d 687, 691 (9th Cir. 1988).

In rare or exceptional instances, if the court determines that the lodestar figure is unreasonably low or high, it may adjust the figure upward or downward based on certain factors. *Miller v. Los Angeles Cty. Bd. of Educ.*, 827 F.2d 617, 620 n.4 (9th Cir. 1987). Therefore, the court has considerable discretion in determining the reasonableness of a professional’s fees. *Gates v. Duekmejian*, 987 F.2d 1392, 1398 (9th Cir. 1992). It is appropriate for the court to have this discretion “in view of the [court’s] superior understanding of the litigation and the desirability of avoiding frequent appellate review of what essentially are factual matters.” *Hensley*, 461 U.S. at 437. Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate. *See In re Placide*, 459 B.R. at 73 (citing *Unsecured Creditors’ Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

FEES AND COSTS & EXPENSES REQUESTED

Fees

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories.

Motion for Relief From the Automatic Stay: Applicant drafted correspondence, communicated with Debtor, reviewed the file, and prepared and filed the substitution of attorney, and drafted the opposition and appeared at the hearing for the Motion for Relief from the Automatic Stay filed by Elina Machado.

Proposed Plans and Motions to Confirm: Applicant prepared, filed, and served nine proposed plans for Debtor along with Motions to Confirm said plans.

Adversary Proceeding: Applicant prepared, filed, and served Debtor's complaint for Quiet Title, and defended against Defendant Elina Machado's Counter Claims. Applicant further prepared, filed, and served discovery.

Case Administration: Applicant prepared, filed Debtor's petition and schedules; prepared filed, and served the instant application for attorney's fees and costs, drafted correspondence, and met with client for administration of the case.

Applicant spent 64.79 hours performing the work in the categories described above.

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The persons providing the services, the time for which compensation is requested, and the hourly rates are:

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Tracy L. Wood	64.79	\$400.00	\$25,916.00
Total Fees for Period of Application			\$25,916.00

Costs and Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$221.25 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Parking and Mileage		\$221.25
		\$0.00
Total Costs Requested in Application		\$221.25

REVIEW OF TIME RECORDS AND SET FEES REQUESTED

In the Motion, Applicant requests \$4,000.00 as the “Chapter 13 base fee” and \$25,916.00 for post-petition litigation. Motion, p. 2:10.5-13; Dckt. 305. In saying \$4,000.00 for a “base fee,” the court interprets that language to mean “for all of the services required to qualify for a \$4,000.00 no-look fee.” As discussed above, those services include not only filing a case, but getting a plan confirmed, completed, and discharge entered. There is not a confirmed plan in the current case. It appears that the success of the post-petition litigation with Ms. Machado may obviate a need for a confirmed plan.

Based upon the scope of the actual and necessary work done, a fixed fee other than in the proportions provided in Local Bankruptcy Rule 2016-1(c)(4) may be appropriate. But that is based on the actual work required.

Exhibits B and C filed by Applicant are the billing records to support the \$25,916.00 for post-petition litigation services. Exhibit B is for the State Court Litigation. Dckt. 309. The State Court fees total \$2,757.00. \$1,600 of the fees are for the review of the State Court judge’s move out order and drafting the appeal brief.

Exhibit C is for the Adversary Proceeding litigation with Ms. Machado (Mr. Machado having defaulted by not responding). Dckt. 310. Both fees for legal services and expenses are mixed into one set of billings organized by date.

A review of the time records does not appear to indicate a large amount of time sunk into any one area. There are several motions for summary judgment, which the court notes were not granted.

Relevant Settlement Agreements

With a settlement having been reached with Ms. Machado and it appearing to have preserved substantial interests of the bankruptcy estate (Settlement Agreement, Dckt. 187), it appears that the legal services of Applicant have been very beneficial to the bankruptcy estate and the Debtor, having achieved establishing his ownership of the property in dispute.

On September 29, 2020, the court conducted a Status Conference concerning the Fee Application, attorney-client dispute, and prosecution of this case. Both Tracy Wood, Esq. and Debtor David Jerome Rynda appeared at the Status Conference. Filed as Exhibit D to the Motion to Borrow (Dckt. 342) is a copy of the Settlement Agreement between Tracy L. Wood, Esq. and David Rynda settling all disputes and

agreeing to an allowance of attorney's fees and costs of \$32,000.00 for the representation.

The agreed amount of \$32,000.00 for the state court, adversary proceeding, and Chapter 13 case services is reasonable. Debtor, with counsel's representation has obtained a substantial benefit through that representation. The ability to turn those to economic benefit turns on Debtor performing his obligations to administer the property of the estate.

FEES AND COSTS & EXPENSES ALLOWED

Fees- Reduced Rate

Applicant seeks to be paid a single sum of \$32,000.00 for its fees and expenses incurred for Client pursuant to the Settlement Agreement between Debtor and Applicant regarding Attorney Fees filed as Exhibit D to the Motion to Borrow. Dckt. 342.

First and Final Fees and Costs in the amount of \$32,000.00 are approved pursuant to Settlement Agreement and authorized to be paid by the Chapter 13 Debtor in a manner consistent with the Settlement Agreement which states that Applicant will be provided with a lien to be recorded at close of escrow as soon as Debtor is able to sell his property.

Applicant is allowed, and the Chapter 13 Debtor is authorized to pay, the following amounts as compensation to this professional in this case:

Fees and Expenses	\$32,000.00
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pursuant to this Application as final fees and costs pursuant to 11 U.S.C. § 330 in this case.

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

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

The Motion for Allowance of Fees and Expenses filed by Tracy L. Wood ("Applicant"), Attorney for David Rynda, Chapter 13 Debtor ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Tracy L. Wood is allowed the following fees and expenses as a professional of the Estate:

Tracy L. Wood, Professional employed by the Chapter 13 Debtor

Fees and Expenses in the amount of \$32,000.00,

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for Chapter 13 Debtor and the Settlement Agreement filed as Exhibit D (Dckt. 342).

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 3007-1 Objection to Claim—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Chapter 13 Trustee, and Office of the United States Trustee on August 4, 2020. By the court’s calculation, 42 days’ notice was provided. 30 days’ notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days’ notice); LOCAL BANKR. R. 3007-1(b)(2).

The Objection to Claim was properly set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

**The Objection to Proof of Claim Number 5 of The Bank of New York Mellon is
XXXXX.**

Paul Wilson and Jessica Lucia Mainvoille-Wilson, Chapter 13 Debtor (“Objector”) requests that the court disallow the claim of The Bank of New York Mellon (“Creditor”), Proof of Claim No. 5 (“Claim”), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of \$275,005.92.

Objector asserts that Creditor’s proof of claim should disallowed in its entirety and objects specifically to Creditor’s escrow charges, amount of pre-petition arrearage, and “FC” costs.

Creditor filed an Opposition on September 1, 2020. Dckt. 62. The Opposition is discussed below.

DISCUSSION

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

Debtor explains that prior to filing they requested an accounting of payments to Creditor from their credit union, The Golden One Credit Union. Debtor provides a copy of this accounting as Exhibit B. Exhibit B is a letter dated August 28, 2019 with a series of transactions made by Debtor Jessica to "Shellpoint Mort" for payments of \$1,022 on different dates during the years 2018 (September through December) and 2019 (January through July).

According to Debtor, the accounting shows that Debtor made payments of \$1,022.00 between September 2018 and July 2019, except for a \$1,539.90 in April 2019. Between February and October 2019, Debtor made payments totaling \$7,671.00 to Shellpoint Mortgage. Thus, according to Debtor, the total owed in arrearage in both principal and interest should be \$3,065.31, not \$9,195 as Creditor's Proof of Claim states.

Issues Identified by Debtor and Responses

Creditor has filed an Opposition to the Objection to the Claim, asserting in large part that the *prima facie* evidentiary value of Proof of Claim 5-1 has not been overcome. Dckt. 62. As of the filing of the Opposition, Creditor stated that it was in the process of reviewing its records and requests additional time for discovery.

The Debtor identifies several other objections to the Proof of Claim filed by Creditor. First, Debtor alleges that not all payments shown in the Proof of Claim have been applied to the loan. In particular, Debtor questions the amount on hand (\$865.44) versus the application of payments on October 23, 2019. Debtor notes that according to the Proof of Claim, there were \$865.44 on hand as of the date of the petition; however, the Creditor applied four (4) payments of \$1,331.75 on October 23, 2019; two days after the petition was filed.

Creditor responds that it is industry standard to hold in suspense any payments made after the recording of the Notice of Default. Because of this practice in anticipation of the foreclosure, Creditor did not apply the \$6,192.44 into Debtor's account. After the filing of the bankruptcy, the funds were applied, only leaving \$865.44 in suspense.

Second, Debtor alleges that Creditor's Proof of Claim fails to provide evidence as to the "FC Costs." According to Debtor, Creditor applies unexplained "FC costs" in the amount of \$1,781.25: late

charges totaling \$153.27, recording costs of \$199.00, and certified mail costs of \$74.70.

Here, Creditor contends that Debtor does not provide evidence to refute the amounts listed and explains that “FC costs,” presumed abbreviation for foreclosures costs, are the actual, reasonable costs incurred by Creditor for recording and publishing the Notice of Default and Notice of Sale.

Third, Debtor alleges that they maintain hazard insurance and made the property tax payments. The Proof of Claim states that the Debtor owed four (4) escrow payments of \$309.98 prior to the filing of the Debtors’ bankruptcy petition. Debtor argues that Creditor fails to show what these delinquent escrow payments are for. Debtor maintains their own hazard insurance on the subject property and pay the real property taxes to the Sacramento County Tax Collector semi-annually.

Debtor provides a copy of the receipt for the real property taxes paid as Exhibit C. The receipt appears to be a webpage printout purported to be of the Sacramento County Tax Collector with a tax payment of \$1,913.01 with a posted date of October 30, 2018.

Debtor requests an accounting from Creditor showing that it has incurred insurance or real property taxes on the subject property.

As for this part of the objection, Creditor points to the Proof of Claim. Creditor argues that the Proof of Claim provides an escrow analysis which documents the escrow deficiency and calculated shortage.

FURTHER PROCEEDINGS AND DISCOVERY

It appears that the disputes relate to factual items that can be easily proven. 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).

“Inasmuch as Rule 3001(f) and section 502(a) provide that a claim or interest as to which proof is filed is “deemed allowed,” the burden of initially going forward with the evidence as to the validity and the amount of the claim is that of the objector to that claim. In short, the allegations of the proof of claim are taken as true. If those allegations set forth all the necessary facts to establish a claim and are not self-contradictory, they *prima facie* establish the claim. Should objection be taken, the objector is then called upon to produce evidence and show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves. But the ultimate burden of persuasion is always on the claimant. Thus, it may be said that the proof of claim is some evidence as to its validity and amount. It is strong enough to carry over a mere formal objection without more.”

Wright v. Holm (In re Holm), 931 F.2d 620, 623 (9th Cir. 1991) (quoting 3 L. King, Collier on Bankruptcy § 502.02, at 502-22 (15th ed. 1991)). The presumptive validity of the claim may be overcome by the objecting party only if it offers evidence of equally probative value in rebutting that

offered by the proof of claim. *Holm* at 623; *In re Allegheny International, Inc.*, 954 F.2d 167, 173-74 (3rd Cir. 1992). The burden then shifts back to the claimant to produce evidence meeting the objection and establishing the claim. *In re Knize*, 210 B.R. 773, 779 (Bankr. N.D. Ill. 1997).

At the end of the day, if there is evidence of a dispute, the creditor has the burden of proof. Here, it appears that Creditor is claiming taxes and insurance amounts that Debtor provides evidence supporting Debtor's contention that Debtor has actually paid them.

Proof of Claim No. 5-1 is signed by Daniel Fujimoto, Esq., an attorney with the Wolf Firm in Irvine, California. It appears that it is not signed by someone employed by Creditor who would have personal knowledge of the claim. The attachment to Proof of Claim No. 5-1 includes various documents that Creditor has a claim and that it has a security interest - which Debtor has not disputed. It also includes a chart prepared by someone at the Creditor showing various payments, charges and "FC costs." Debtor has presented evidence disputing these amounts.

October 20, 2020 Hearing

As of the court's review of the docket at the time of drafting this tentative ruling, no further documents have been filed with the court.

At the hearing, **XXXXX**

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 Claim of Bank of New York Mellon filed by Paul Wilson and Jessica Lucia Mainvoille-Wilson, the Chapter 13 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 Objection to Proof of Claim Number 5 of The Bank of New York Mellon is **XXXXX**.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 11, 2020. By the court's calculation, 39 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

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

The debtor, Kenneth Snowder ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for:

1. Monthly plan payments of \$650 for 24 months;
2. After 24 months of plan payments but before the 30th month, Debtor will refinance his home so as to pay his creditors in full;
3. Including a 100% dividend to unsecured claims totaling \$63,452.00.

Amended Plan, Dckt. 22. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on October 6, 2020. Dckt. 28. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor has filed two Chapter 13 Plans.
- B. Debtor has failed to show that either plan is feasible as required pursuant to 11 U.S.C. § 1325(a)(6).

DISCUSSION

Two Plans filed

Debtor has filed two Chapter 13 plans, one on September 10, 2020 and one on September 11, 2020. Trustee believes the second filing was in error but Trustee is uncertain if Debtor will need to file, set, and serve a Motion to Confirm Plan for the second plan filed.

Infeasible Plan

Trustee alleges that the Plan is not feasible. 11 U.S.C. § 1325(a)(6). Trustee is concerned that Debtor may not be able to refinance within the next 24 months in order to pay off 100% of his unsecured debt, as proposed in his plan. Debtor had stated in his declaration that he was unable to refinance his home prior to filing for bankruptcy due to poor credit. Debtor's payments to the Trustee have been consistently late since filing on June 29, 2020, but payments are current. Thus, the Plan may not be feasible and Debtor has failed to say what he will do if he is unable to refinance within the next 25 months.

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 the debtor, Kenneth Snowden ("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, Creditor, and Office of the United States Trustee on September 2, 2020. By the court's calculation, 48 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 Westlake Services, LLC ("Creditor") is granted, and Creditor's secured claim is determined to have a value of \$9,000.00.

The Motion filed by Karen Blakley ("Debtor") to value the secured claim of Westlake Services, LLC ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 22. Debtor is the owner of a 2013 Kia Optima ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$9,000.00 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).

On October 6, 2020 Trustee filed an Opposition on the basis that the Certificate of Service does not indicate that the first class mail was addressed to the appropriate officer or agent of service as required by FRBP 7004 and Debtor's declaration was executed September 31, 2020 where the declaration was filed September 2, 2020. Dckt. 22.

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on April 2016, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$17,304.81. Proof of Claim, No. 9. ~~Therefore, Creditor's claim secured by a lien on the~~

~~asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of \$9,000.00, the value of the collateral. See 11 U.S.C. § 506(a).~~

At the hearing, counsel for the Debtor addressed the issue raised by the Trustee concerning whether proper service has been made and whether any order issued by the court valuing the secured claim would be effective. ~~XXXXXXXXXXXXXXXXXX~~.

~~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 Karen Blakley ("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 Westlake Services, LLC ("Creditor") secured by an asset described as 2013 Kia Optima ("Vehicle") is determined to be a secured claim in the amount of \$9,000.00, 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 \$9,000.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.~~

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the 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 26, 2020. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is XXXXX.

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

- A. Debtor failed to provide tax returns.
- B. Debtor Plan term exceeds 60 months.
- C. Debtor failed to file a Motion to Value the Secured claim.

DISCUSSION

Trustee's objections are well-taken.

Failure to Provide Tax Returns

At the meeting of creditors, Debtor failed to provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A)(i); FED. R. BANKR. P. 4002(b)(3). Debtor has failed to provide the tax transcript. That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

The Meeting of Creditors was continued to September 10, 2020 at which time Debtor must provide Trustee with copies of her tax returns.

Plan Term is More Than 60 months

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to Trustee, the Plan will complete in 73 months due to claims being filed for amounts higher than the Debtor scheduled. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

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 Westlake Financial Svcs. Debtor has failed to file a Motion to Value the Secured Claim of Westlake Financial Svcs, however. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

The Trustee reported that the First Meeting has been concluded, a motion to value is set for October 20, 2020.

The Trustee concurred with Debtor's counsel in requesting the hearing be continued and conducted in conjunction with the hearing on the Motion to Value.

October 20, 2020 Hearing

Debtor's Motion to Value the Secured Claim of Westlake Services, LLC, set to be heard October 20, 2020, was ~~xxxxxx and the claim was valued at Debtor's amount.~~

A Notice of Intent to Close the Chapter 13 Case due to failure to file a Financial Management Certificate Course was filed on October 7, 2020. Dckt. 26. Debtor filed a Financial Management Course Certificate on October 16, 2020. Dckt. 31.

At the hearing, ~~xxxxxxxxxxxxxx.~~

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

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

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee,

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

IT IS ORDERED that the Objection is **XXXXX**.

17. [20-23834-E-13](#) **CHRISTINE BONILLA** **OBJECTION TO CONFIRMATION OF**
[DPC-1](#) **Peter Macaluso** **PLAN BY DAVID P. CUSICK**
9-23-20 [26]

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 September 23, 2020. By the court’s calculation, 27 days’ notice was provided. 14 days’ notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). 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 -----

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

A. Debtor’s Chapter 13 documents are incomplete.

DISCUSSION

Trustee’s objections are well-taken.

Incomplete Chapter 13 Documents

Trustee alleges that Debtor cannot comply with the Plan. 11 U.S.C. § 1325(a)(6). Debtor did not provide her middle name on the Voluntary Petition, which may prevent creditors from identifying this Debtor. Additionally, Debtor failed to attach a statement for property or business income. Line #8a reflects \$1,800.00 but it is not clear if this income is gross or net proceeds. Debtor reports no rental income for 2018 and 2019 in her Amended Statement of Financial Affairs despite admitting at the First Meeting of Creditors that she has received income for those two years. Thus, the Plan may not be confirmed.

On October 13, 2020, Debtor filed a Reply requesting the Objection be denied on the basis that Debtor has filed amended Petition, Schedule I and Statement of Financial Affairs on September 30, 2020. Dckt. 33.

A review of Debtor amended petition shows that Debtor has included her middle name. Dckt. 31. Line 7 of Debtor's amended Schedule I calculates a monthly take home pay of \$1,800. Dckt. 30. Line 8a now reflects a \$0.00 amount. *Id.* Debtor's amended Statement of Financial Affairs now reflects the received income for years 2018 and 2019 in the amount of \$7,200 and \$9,215.00 respectively. Dckt. 32.

Debtor having addressed Trustee's objections, the Plan complies with 11 U.S.C. §§ 1322 and 1325(a). The Objection is overruled, and the Plan is confirmed.

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

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

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

IT IS ORDERED that the Objection is overruled, and Christine Bonilla's ("Debtor") Chapter 13 Plan filed on August 5, 2020, is confirmed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Debtor, Debtor's Attorney, and creditors on August 27, 2020. By the court's calculation, 54 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). The defaults of the non-responding parties and other parties in interest are entered.

The Objection to Proof of Claim Number 10 of Renovate America Financing is sustained and disallowed.

David Cusick, the Chapter 13 Trustee ("Objector") requests that the court disallow the claim of Renovate America Financing ("Creditor"), Proof of Claim No. 10 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of \$3,500.

Objector asserts that where a Creditor has already filed a claim, Debtor's Attorney does not have standing to file a claim on their behalf. Trustee now has multiple claims on file for the same debt and the claim filed by Debtor's attorney appears to duplicate the claim previously filed by the Creditor. The claim filed by Debtor's attorney has no attachments supporting the claim and thus has insufficient proof of the claim amount.

DISCUSSION

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting

to a proof of claim has the burden of presenting substantial evidence to overcome the prima facie validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and requires financial information and factual arguments. *In re Austin*, 583 B.R. 480, 483 (B.A.P. 8th Cir. 2018). Notwithstanding the prima facie validity of a proof of claim, the ultimate burden of persuasion is always on the claimant. *In re Holm*, 931 F.2d at p. 623.

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

A review of Creditor's timely filed Proof of Claim 6 asserts an unsecured claim in the amount of \$14,275.25 with the basis of the claim being "Home Improvement - windows and doors." Proof of Claim 6, at 2, ¶ 8. Attachment #1 is a Home Improvement Retail Installment Contract. No language is provided that would indicate that the contract was secured by the windows and doors.

Debtor wishes to pay this creditor as a secured claim through her Chapter 13 Plan. In her Reply, Debtor states that Counsel for Debtor filed the secured Proof of Claim #10 on behalf of Creditor to be properly paid through the Chapter 13 plan so that it reflects a \$14,275.25 claim which is secured by "windows/doors" on Debtor's property. According to the Reply, Counsel for Debtor attempted to communicate with Creditor regarding the amendment but Debtor's Counsel communications did not receive any response.

For Proof of Claim No. 10-1, Debtor and Counsel appear to be attempting to file multiple claims for a creditor. Or, Debtor is attempting to improperly "disallow" a creditor's claim.

The Objection is sustained and Proof of Claim No. 10-1 is disallowed. This is without prejudice to Proof of Claim No. 6-1 filed by Renovate America Financing.

Recovery of attorney's fees and costs, if any, against Debtor as the filer of the Proof of Claim shall requested by post judgment motion. Fed. R. Civ. P 54, Fed. R. Bank. P. 7054, 9014.

Based on the evidence before the court, Creditor's claim is disallowed in its entirety. The Objection to the Proof of Claim is sustained.

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 filed in this case by David Cusick, the Chapter 13 Trustee, ("Objector") to Proof of Claim No. 10-1 filed by Debtor Deborah Watson for Renovate America Financing ("Creditor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Proof of Claim Number 10-1

filed by Debtor Deborah Watson for Creditor is disallowed in its entirety. This is without prejudice to Proof of Claim No. 6-1 filed by Creditor.

Attorney's Fees and Costs, if any, for prevailing party Chapter 13 Trustee against Debtor shall be requested as provided in Federal Rule of Civil Procedure 54 and Federal Rule of Bankruptcy Procedure 7054, 9014.

19. [19-27838-E-13](#) **TIAZJANAE WILRIDGE** **CONTINUED MOTION TO CONFIRM**
[PLC-1](#) **Peter Cianchetta** **PLAN**
7-23-20 [28]

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on July 23, 2020. By the court's calculation, 40 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 ~~XXXXX~~.

The debtor, Tiazjanae Imani Wilridge ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for monthly plan payments of \$330.00 commencing July 25, 2020 for 60 months, and a 0 (zero) percent dividend for unsecured claims totaling \$31,539. Amended Plan, Dckt. 31. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on August 6, 2020. Dckt. 37. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor failed to file supplemental Schedules to reflect changes in financial circumstances.

DISCUSSION

Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Trustee notes that in the declaration Debtor testifies to now being employed, yet Debtor has failed file supplemental Schedule I to update employer and income information and updating any expenses on Schedule J. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

On September 1, 2020, the Debtor filed a Supplemental Schedules, which Debtor's counsel argued addressed the gaps in the financial information. The Chapter 13 Trustee agreed to a continuance to allow time to review the Supplemental Schedules (Dckt. 43.).

Trustee's Amended Response

On September 4, 2020 Trustee filed an Amended Response still objecting to Debtor's Plan on the basis that Debtor's Schedules show a \$335 family support payment but Debtor has failed to provide a declaration from the contributor regarding this payment, and thus Debtor has not proven she can make plan payments. Dckt. 46. However, the Debtor is now current in plan payments with the next payment due September 25, 2020 prior to the hearing.

September 29, 2020 Hearing

At the hearing, the Trustee reported that the Debtor is current. However, the additional income contributors are not confirming they can make the contributions.

Counsel for the Debtor reported that the various sources of income vary The Trustee concurred in continuing the hearing.

October 20, 2020 Hearing

As of the court's review of the docket at the time of drafting this tentative ruling, no further documents have been filed with the court.

At the hearing, **XXXXX**

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

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

The Motion to Confirm the Chapter 13 Plan filed by the debtor, Tiazjanae Imani Wilridge ("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 **XXXXX**.

20.	<u>20-23738</u> -E-13 <u>DPC-1</u> 20 thru 21	KIMBERLY GORDON Peter Macaluso	OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 9-16-20 <u>[26]</u>
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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

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 September 16, 2020. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

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

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

- A. Plan relies on a Motion to Value Collateral.
- B. Plan fails Liquidation Test due to a preference payment.

DISCUSSION

Trustee's objections are well-taken.

Debtor's Reliance on Motion to Value Secured Claim

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of Regional Acceptance Corporation. Debtor filed a Motion to Value the Secured Claim of Regional Acceptance Corporation and was set for hearing on October 20, 2020. The court has granted the Motion and the secured claim was valued at Debtor's valuation. Thus, this objection is solved in favor of Debtor.

Debtor Fails Liquidation Analysis

Debtor's plan fails the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4) on the basis that Debtor has been making preference payments that would be avoidable pursuant to 11 U.S.C. § 547(b) in a Chapter 7 proceeding. Trustee asserts that at the Meeting of Creditors, Debtor testified that she has been making payments of \$500.00 for the past two years to her father a total of \$12,000.00. Moreover, she continues to make payments of \$500.00 after the petition was filed and such payments were not disclosed on question number 7 of the Statement of Financial Affairs that she has made payments of \$500.00 for the past two years.

The Plan proposes to pay a 0 percent dividend to unsecured claims, which total \$60,541.90, if Trustee were to avoid the preference payment, creditors with unsecured claims would receive in a chapter 7 proceeding \$10,800 after deducting trustee fees. In this case, the total amount that will be paid to creditors with unsecured claims is \$0.00. Thus, the court may not approve the Plan. ^{Fn.1.}

FN. 1. This is Debtor's second recent bankruptcy case. Her prior case, 18-24096, was filed on June 29, 2018 and dismissed on July 27, 2020. Debtor was represented in the prior case by the same counsel as in the present case. The prior case was dismissed due to defaults in plan payments.

Schedule I in the prior case does not disclose the payment of \$500 a month to Debtor's father. 18-24096; Dckt. 1 at 34-35. On the Statement of Financial Affairs in the prior case Debtor states that \$500 was paid to Daniel Gordon within a year of that case being filed, and that Daniel Gordon was owed \$0.00. *Id.* at 38-39. This information is stated by Debtor under penalty of perjury.

However, in her confirmed Chapter 13 Plan in the prior case Debtor provides for making Class 4 payments of \$500 a month to her "father" for a "Mini mortgage" for "the balance of \$410,000 that was due for her share in the purchase." *Id.*; Plan, § 3.10, Dckt. 3. No proof of claim has been filed by any creditor for any alleged "mini mortgage" in the prior case.

On schedule A/B in the prior case, Debtor lists owing a single family home with a value of \$128,000. *Id.*; Dckt. 1 at 11. Though stating under penalty of perjury that she is the only owner of the Property, Debtor states under penalty of perjury that the current value of her portion of the property for which she is the only owner is \$64,000. *Id.*

On Schedule D Debtor lists Daniel Gordon, who is identified as her father, as having a claim for \$10,000 for which she is to make payments of \$500 a month "on the balance of \$410,000 that was due for her share of the purchase." *Id.*; Dckt 1 at 19. This is inconsistent with the Statement of Financial Affairs stating that the balance owed Daniel Gordon is \$0.00.

Debtor did not list any other creditor having a debt secured by the real property listed on Schedule A.

On Schedule A/B filed in the present case, Debtor now states that the Bremmer Way Property (the same for which she stated she was the sole owner in the prior case), is now owned by her or someone else. Dckt. 1 at 11. Debtor still says, three years later, in a rising real estate market, that the property is still worth only \$128,000 and that her interest is still only \$64,000. *Id.*

On Schedule D Debtor lists a creditor named “Mini Mortgage” being owed \$10,000. The property securing the claim is described as “debtor is to pay father \$500 per month on the balance of 410,000 that was due for her share in the purchase.” *Id.* at 19-20. As in the prior case, Debtor does not actually identify any collateral that secures this alleged claim. The “number, street, City, State & Zip Code for creditor “Mini Mortgage” is stated by Debtor under penalty of perjury as:

Daniel Gordon
1320 Bonita Bahia
Benicia, CA 94510

On the Statement of Financial Affairs, Question 7, Debtor states under penalty of perjury that in the year preceding the filing of this bankruptcy case she paid Daniel Gordon \$500 and that he is still owed “\$0.00.” Dckt. 1 at 38-39.

As in the prior case, Debtor’s plan provides for “Mini Mortgage” in Class 4, saying that she is to pay her “father \$500 a month for the \$410,000 that was due for her share in the purchase.” Dckt. 3 at 4.

As in the prior case, Schedule I in this case shows that Debtor is a highly compensated individual, with gross monthly wages of \$6,450.00. Dckt. 1 at 32. From that Debtor has \$1,534 deducted for taxes, \$442 for mandatory retirement contribution, and \$629 for Insurance. She has take home pay of \$3,843.

Debtor has no dependants, and lists on Schedule J having a rent/mortgage payment of only \$500 a month. Dckt. 1 at 34-35. Debtor computes her necessary expenses to consume all but \$350.00 a month of her income.

Again, no proof of claim has been filed for creditor “Mini Mortgage.” It is curious that no proof of claim was filed for a creditor with a secured claim. It is also disturbing the various values given, reference to a \$410,000 due for purchase of this property stated by Debtor to have a value of only \$128,000.

At the hearing, the court inquired from the Chapter 13 Trustee if he had been provided with a note, purchase agreement, or other debt document and security being granted for such for the claim owed to “Mini Mortgage” or her father. The Chapter 13 Trustee reported **XXXXXXX**

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

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

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

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

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

21.	<u>20-23738-E-13</u> <u>PGM-2</u>	KIMBERLY GORDON Peter Macaluso	MOTION TO VALUE COLLATERAL OF REGIONAL ACCEPTANCE CORPORATION 9-10-20 [21]
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Final Ruling: No appearance at the October 20, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on September 10, 2020. By the court’s calculation, 40 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.

<p>The Motion to Value Collateral and Secured Claim of Regional Acceptance Corporation (“Creditor”) is granted, and Creditor’s secured claim is determined to have a value of \$7,865.00.</p>
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The Motion filed by Kimberly Gordon (“Debtor”) to value the secured claim of Regional

Acceptance Corporation (“Creditor”) is accompanied by Debtor’s declaration. Declaration, Dckt. 23. Debtor is the owner of a 2013 Ford Fusion (“Vehicle”). Debtor seeks to value the Vehicle at a replacement value of \$7,865.00 as of the petition filing date. As the owner, Debtor’s opinion of value is evidence of the asset’s value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

DISCUSSION

The lien on the Vehicle’s title secures a purchase-money loan incurred on August 31, 2016, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$14,358.34. Proof of Claim, No. 3. Therefore, Creditor’s claim secured by a lien on the asset’s title is under-collateralized. Creditor’s secured claim is determined to be in the amount of \$7,865.00, 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 Kimberly Gordon (“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 Regional Acceptance Corporation (“Creditor”) secured by an asset described as 2013 Ford Fusion (“Vehicle”) is determined to be a secured claim in the amount of \$7,865.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$7,865.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

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

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 Creditor and Office of the United States Trustee on September 9, 2020. By the court's calculation, 41 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 William Camp, The Estate of William Camp, William Camp's successors and assigns ("Creditor") is granted, and Creditor's secured claim is determined to have a value of \$0.00.

The Motion to Value filed by Mercedes Perez ("Debtor") to value the secured claim of William Camp, The Estate of William Camp, William Camp's successors and assigns ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 286. Debtor is the owner of the subject real property commonly known as 6 Fourth Avenue, Isleton, California ("Property"). Debtor seeks to value the Property at a fair market value of \$150,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

value of a secured claim.

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

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

NO PROOF OF CLAIM FILED

The court has reviewed the Claims Registry for this bankruptcy case. No Proof of Claim has been filed by a creditor that appears to be for the claim to be valued.

OPPOSITION

Creditor has not filed an Opposition.

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately \$161,000.00. Schedule D, Dckt. 1. Creditor's junior deed of trust secures a claim with a balance of approximately \$110,000.00 or \$47,100.00 (Debtor stating conflicting values in the Schedules). *Id.* Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of \$0.00, the value of the collateral, and therefore no payments be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). 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 Mercedes Perez ("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 William Camp, The Estate of William Camp, William Camp's successors and assigns ("Creditor") secured by a junior in priority deed of trust recorded against the real property commonly known as 6 Fourth Avenue, Isleton, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$150,000.00 and is encumbered by a senior lien securing a claim in the amount of \$161,000.00, which exceeds the value of the Property that is subject to Creditor's lien.

23. [11-44540-E-13](#) **MERCEDES PEREZ** **MOTION TO VALUE COLLATERAL OF**
[PLC-11](#) **Peter Cianchetta** **WILLIAM H. CAMP TRUST**
9-9-20 [288]

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 Creditor and Office of the United States Trustee on September 9, 2020. By the court's calculation, 41 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 William H. Camp Trust ("Creditor") is granted, and Creditor's secured claim is determined to have a value of \$0.00.

The Motion to Value filed by Mercedes Perez ("Debtor") to value the secured claim of William H. Camp Trust ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 290.

Debtor is the owner of the subject real property commonly known as 6 Fourth Avenue, Isleton, California (“Property”). Debtor seeks to value the Property at a fair market value of \$150,000.00 as of the petition filing date. As the owner, Debtor’s opinion of value is evidence of the asset’s value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

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

NO PROOF OF CLAIM FILED

The court has reviewed the Claims Registry for this bankruptcy case. No Proof of Claim has been filed by a creditor that appears to be for the claim to be valued.

OPPOSITION

Creditor has not filed an Opposition.

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately \$161,000.00. Schedule D, Dckt. 1. Creditor’s junior deed of trust secures a claim with a balance of approximately \$110,000.00 or \$47,100.00 (Debtor stating conflicting amounts in the Schedules). *Id.* Therefore, Creditor’s claim secured by a junior deed of trust is completely under-collateralized. Creditor’s secured claim is determined to be in the amount of \$0.00, the value of the collateral, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). 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 Mercedes Perez (“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 William H. Camp Trust (“Creditor”) secured by a junior in priority deed of trust recorded against the real property commonly known as 6 Fourth Avenue, Isleton, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$150,000.00 and is encumbered by a senior lien securing a claim in the amount of \$161,000.00, which exceeds the value of the Property that is subject to Creditor’s lien.

**NO APPEARANCE REQUIRED. POSTED AS TENTATIVE SO THAT
COUNSEL MAY ADDRESS ISSUES WITH THE COURT
CONCERNING THE CONTINUANCE.**

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 Not Notice Provided. No Certificate of Service was filed. The court is unable to determine if proper parties were served.

The hearing on the Motion to Value Collateral and Secured Claim of John and Tesibel Frey, Elizabeth Kreuger, and Leslie & Ruth Frey ("Creditor") is continued to 2:00 p.m. on November 24, 2020.

The debtor, Mercedes Perez ("Debtor"), filed this motion to value the secured claim of John and Tesibel Frey as Trustees of the Frey Family Trust; Elizabeth Kreuger as Trustee of the Elizabeth Kreuger Living Trust; and Leslie & Ruth Frey as Trustee of the Leslie Merl and Ruth Elizabeth Frey Revocable Trust ("Creditor"), which is accompanied by Debtor's declaration. Declaration, Dckt. 302. Debtor is the owner of the subject real property commonly known as 6 Fourth Avenue, Isleton, California ("Property"). Debtor seeks to value the Property at a fair market value of \$150,000.00 as of the petition filing date.

This is Debtor's second attempt to value this secured claim. The original Motion to Value the Secured Claim (PLC-6) was filed on July 24, 2020. Dckt. 253. Although that motion was granted, the existing order entered on September 23, 2020 may be void. Counsel for Debtor in a related matter indicated that the order was void because he needed to do service by publication. Counsel was supposed to file a Rule 60(b) Motion. However, no motion has been filed yet.

No certificate of service has been filed for this Contested Matter. The court continues the hearing to allow Counsel to document the sufficient service of this Motion.

Additionally, in light of the existing order of record which has not been vacated and the prior motion dismissed, the court cannot enter a second order purporting to duplicate the ruling thereon.

The court continues the hearing to allow counsel do proper service and file a motion for the order related to and for the dismissal of the PLC-6 motion.

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 Mercedes Perez (“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 is continued to 2:00 p.m. on November 24, 2020.

25.	<u>11-44540-E-13</u> <u>PLC-6</u>	MERCEDES PEREZ Peter Cianchetta	MOTION TO VALUE COLLATERAL OF JOHN AND TESIBEL FREY, ELIZABETH KREUGER, AND LESLIE & RUTH FREY 7-24-20 [<u>253</u>]
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The hearing on the Motion to Value Collateral and Secured Claim of John and Tesibel Frey, Elizabeth Kreuger, and Leslie & Ruth Frey (“Creditor”) is removed from the calendar, the matter having been heard on September 15, 2020 and Debtor having filed a new Motion to Value (Dckt. 29).

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 24, 2020. By the court's calculation, 57 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>
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The debtors, Lorne Howard Williams and Jamie Lynn Williams ("Debtor") seek confirmation of the Modified Plan to provide for forbearance delinquency, on-going mortgage payments, priority taxes, auto loan payment and trustee payments. Declaration, Dckt. 44. The Modified Plan provides:

1. \$3,260.00 per month for 2 months,
2. \$685.97 per month for 3 months,
3. \$3,575.00 per month for 55 months. and
4. a one (1) percent dividend to unsecured claims totaling \$1,896.39.

Modified Plan, Dckt. 40. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on October 6, 2020.

Dckt. 54. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor is delinquent in plan payments.
- B. The Plan may not be Debtor's best effort.
- C. The Plan may improperly modify a claim secured by Debtor's principal residence.

DISCUSSION

Delinquency

The Chapter 13 Trustee asserts that Debtor is \$3,602.00 delinquent in plan payments, which represents multiple months of the \$3,575.00 plan payment. Before the hearing, another plan payment will be due. According to the Chapter 13 Trustee, the Plan in § 2.01 calls for payments to be received by the Chapter 13 Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Not Best Effort

The Chapter 13 Trustee alleges that the Plan violates 11 U.S.C. § 1325(b)(1), which provides:

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

The Chapter 13 Trustee argues that Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A)(i); FED. R. BANKR. P. 4002(b)(3). Debtor has failed to provide the tax transcript. That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Debtor has **failed to timely provide the Chapter 13 Trustee with business documents** including:

- A. Questionnaire,
- B. Two years of tax returns,
- C. Six months of profit and loss statements,
- D. Six months of bank account statements, and
- E. Proof of license and insurance or written statement that no such documentation exists.

11 U.S.C. §§ 521(e)(2)(A)(i), 704(a)(3), 1106(a)(3), 1302(b)(1), 1302(c); FED. R. BANKR. P. 4002(b)(2) & (3). Debtor is required to submit those documents and cooperate with the Chapter 13 Trustee. 11 U.S.C. § 521(a)(3). Without Debtor submitting all required documents, the court and the Chapter 13 Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325.

Debtor's Amended Form 122C-1 filed on August 24, 2020 now indicates that Debtor is now below median income. Trustee argues that Debtors have significantly decreased their income on Form 122C-1 in interest/dividends/royalties from \$6,825.73, for Debtor Lorne, now reduced to \$469.66 and added interest/dividend/royalties income of \$451.16 for Debtor Jamie. As previously noted by Trustee, Debtor does not offer any explanation as to why Debtor Lorne's amount was overstated in the original 122C-1 and no amount was stated for Debtor Jamie, which now brings Debtor under median income.

Modification of an Obligation Secured Only by Principal Residence

Trustee argues that Debtor's Plan may contain an improper modification of a claim secured only by a security interest in real property that is Debtor's principal residence. Creditor has filed Proof of Claim 2-1 indicating a secured claim in the amount of \$714,639.18, secured by a first deed of trust against the property commonly known as 22830 Oak Grove Court, Grass Valley, California. Debtor's Schedules indicate that this is Debtor's primary residence.

Unfortunately, the Chapter 13 Trustee does not provide the court with what concerns the Trustee has with respect to this provision, only stating with particularity,

3. ENSMINGER PROVISION. The Plan's additional provisions may improperly try to alter the rights of a claim to PNC Mortgage, (Pages 7-8; Section 7.01 Non-Standard Provisions for Section 2.01,) secured only by an interest in Debtor's principal residence, contrary to 11 U.S.C. §1322(b)(2). The Trustee is uncertain if the Court will want to approve the terms as altered.

Opposition, p. 3:6-11; Dckt. 54. The court is uncertain what provision of Section 7.01 causes the Trustee's uncertainty.

Debtor's declaration states that the Plan includes the particular Ensminger Provision which references a potential future modification of the claim secured by the primary residence proposes such modification based on Debtor's process of obtaining a loan modification with this Creditor to cure the pre-petition arrearage.

While the Additional Provisions includes the future modification language, it also include the following provision:

Further, as per Forbearance Agreement Debtors shall cure the \$6,949.89 post-petition delinquency to Class 1 Creditor; PNC Mortgage starting month 6 of the plan . Trustee shall distribute a dividend in the amount of \$126.36 per month starting month 6 of the plan.

Plan, Additional Provision 7.02; Dckt. 40. On its face, this may be a "modification" of the Creditor's secured claim through confirmation of a Plan without Creditor's consent. The court, from the Motion and Plan, is uncertain what bankruptcy authorized forbearance agreement modifies the obligation.

This seems to indicate to the court that the loan modification has not been approved. There being no approval from creditor, the modification violates 11 U.S.C. § 1322(b)(2), which prohibits the modification of an obligation secured only by Debtor's residence.

At the hearing, the Chapter 13 Trustee addressed these concerns, **XXXXXXX**

Counsel for the Debtor reported to the court **XXXXXXX**

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

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtors, Lorne Howard Williams and Jamie Lynn Williams (“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.

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 June 30, 2020. By the court's calculation, 58 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 ~~XXXXX~~.

The debtor, Leanne Lynn Boger ("Debtor") seeks confirmation of the Modified Plan to address actual claims filed and to cure default caused by a reduction in income and underestimated expenses. Declaration, Dckt. 48. The Modified Plan provides for monthly plan payments of \$670.00 for months 9 through 60, and a 0 (zero) percent dividend to unsecured claims totaling 38,952.60. Modified Plan, Dckt. 50. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on August 7, 2020. Dckt. 58. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor is delinquent in plan payments.
- B. The Plan is not feasible.
- C. Debtor failed to explain two large payments made to Trustee in July.

DISCUSSION

Delinquency

The Chapter 13 Trustee asserts that Debtor is \$3,169.30 delinquent in plan payments, where the plan as proposed calls for \$17,670.00 to have been paid but Debtor has paid a total of \$14,500.70 to date. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). The plan may not be feasible. According to the Trustee's calculation the plan will **take 72 months to complete**. The Trustee shows approximately \$41,943.08 remains to be paid through the plan. Thus 63 months remain ($\$41,943.08 / \$670.00 = 63$).

Moreover, §7.02 of the proposed plan states the Trustee is to pay the Post-Petition Monthly Payment through month 8 (June 2020) of the plan. The debtor will pay the payment directly beginning August 1, 2020. Thus, it appears that no payment will have been made for the month of July, which is contrary to the mortgage agreement which states that Debtor was to begin modification payments beginning April 1, 2020. *See* Dckt. 36, at 16.

Larger Payments

Debtor paid Trustee received two payments of \$1,566.90 each in the month of July, 2020. Trustee is uncertain how Debtor was able to afford such payments when Debtor's supplemental Schedules J filed on June 30, 2020 as Exhibit A, indicates Debtor has a monthly net income of \$670.00. *See* Dckt. 49, at 5. Debtor fails to explain the source of the funds whether these savings, actual income, or Debtor liquidated an asset.

At the hearing, the Trustee reported that there was still a plan delinquency addressed. The Trustee concurred in a continuance.

Debtor's Supplemental Pleading

Debtor filed a Supplement to the Motion on September 22, 2020. Dckt. 63. Debtor also filed a Declaration in support of the Supplement. Dckt. 64.

Regarding Trustee's raised objections, Debtor first requests that the issue regarding delinquency be addressed at the hearing and further asserts that according to her calculations, the total paid out according to the plan is \$51,484.53 leaving a balance of \$555.47 to cover interest on the class 2 vehicle claim. Debtor would not oppose to a minor modification of the plan payments to account for any plan shortage.

Debtor informs the court that she made direct mortgage payments to creditor Carrington Mortgage Services for November 2019, August 2020, and September 2020. Provided that Trustee has made eight payments to creditor as called for the plan, there should not be any skipped payments. Debtor would consent to the following additional language to cover any remaining shortage:

“Section 7.02 is modified in that the Debtor will pay direct payments to Carrington Mortgage Services in the amount of \$1870.48 beginning July 1, 2020.”

Debtor explains that the additional payment made was a cashier’s check that was un-deposited and eventually returned that appears to not have been taken out of her account by the TFS system due to technical problem, savings that she had accumulated, and a one-time bonus issued by her employer due to a Payroll Protection loan received by her employer. Dckt. 64, ¶¶ 5-9.

Lastly, Debtor states that the Supplemental Schedules I and J filed as exhibits to the motion are an accurate reflection of Debtor’s current monthly income and expenses. *Id.*, ¶ 10. Debtor testifies that she is about to start a new job and once she builds her commissions, she anticipates an increase in income. *Id.*, ¶ 11.

Debtor provides the following language in her prayer for relief for the Order modifying her Chapter 13 Plan:

Plan payments under the First Modified Chapter 13 Plan would be as follows: \$17,200.00 total paid in for Months 1 through 8, and \$670.00 per month for months 9 through 60 of the plan. The percentage paid to unsecured creditors would remain the same so that all allowed unsecured claims would be paid no less than zero (0) cents on the dollar, based upon the actual claims and anticipated claims filed.

September 29, 2020 Hearing

At the hearing, the Trustee states that with ten months in, Debtor is in default on the payments for the claim to be moved to Class 4.

October 20, 2020 Hearing

As of the court’s review of the docket at the time of drafting this tentative ruling, no further documents have been filed with the court.

At the hearing, **XXXXXXX**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 23, 2020. By the court's calculation, 27 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice).

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

<p>The Motion to Sell Property is granted.</p>

The Bankruptcy Code permits Ronald Ernest Marks, Chapter 13 Debtor, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here, Movant proposes to sell the real property commonly known as 5011 French Creek Road Shingle Springs, California ("Property").

The proposed purchaser of the Property is Richard and Jennifer Hall, and the terms of the sale are:

- A. Purchase price of \$555,000, with Buyer to provide a \$5,000 deposit. Remainder of price is to be paid within 30 days after the motion is granted.
- B. Sale is subject to overbidding and adjustments.
- C. Property is purchased as-is.

- D. Real estate agent commissions, property taxes, an owner's title insurance premium, recording fees, natural hazard disclosure, title and escrow fees, and transfer tax to be paid through escrow.

Proposed Overbidding Procedures

Debtor proposes the following overbidding procedures:

1. Bids shall be submitted in increments of at least \$7,000.00 more than the previous bid, with the first overbid required amount of \$562,000 or higher.
2. On the day of the hearing date on this matter, the over-bidder/purchaser must provide Debtor with an approval letter from a financing entity for the full amount of the purchase price, or a bank statement demonstrating that the over-bidder/purchaser has the full amount of funds on hand necessary for the complete purchase price.
3. Within 30 days of the date of the hearing on this matter, the over-bidder/purchaser must provide Debtor with full payment of the purchase price as submitted to the Court by the over-bidder/purchase at the hearing during the over-bidding process.
4. In the event that an over-bidder/purchaser fails to comply with any of these terms, their deposits paid shall be forfeited, and the next highest and previous bidder shall automatically become the winning bidder, and thus obligated to complete the terms of the sale; however, an over-bidder/purchaser that becomes the winning bidder under these circumstances shall have the same amount of time to execute the terms for this sale that have been set-forth in this motion and by the Court.

Trustee's Response

On October 6, 2020, Trustee filed a response stating no opposition to the terms of the sale but updating the court regarding Debtor's Plan: the sale was not part of the confirmed plan, and although no secured or priority claims remain to be paid, approximately \$10,188.38 is needed to pay unsecured at 92.5%. Dckt. 38 at 1. Trustee expects Debtor may want to payoff the plan with some of the proceeds. *Id.* at 2.

DISCUSSION

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because the Property generates no revenue for the estate, and because sale of the Property will allow Debtor to pay the secured creditors on the Property in full.

Movant has estimated that a 2.5 percent broker's commission from the sale of the Property to Seller's broker will equal approximately \$13,875.00, and a 2.5 percent broker's commission from the sale of the Property to Buyer's broker will equal approximately \$13,875.00. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker an amount not more than 5.0 percent commission.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 6004(h) stays an order granting a motion to sell for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court because Debtor may lose the offer if the sale is not concluded expeditiously and Debtor has made arrangements to secure a rental residence around the time his home might be sold and his rental arrangement might be lost if he does not move quickly.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 6004(h), and this part of the requested relief is not 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 Sell Property filed by Ronald Ernest Marks, Chapter 13 Debtor, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Ronald Ernest Marks, Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Richard and Jennifer Hall or nominee ("Buyer"), the Property commonly known as 5011 French Creek Road Shingle Springs, California ("Property"), on the following terms:

- A. The Property shall be sold to Buyer for \$555,000, on the terms and conditions set forth in the Purchase Agreement, Exhibit 34, Dckt. A, and as further provided in this Order.
- B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.
- C. Chapter 13 Debtor is authorized to execute any and all documents reasonably necessary to effectuate the sale.
- D. Chapter 13 Debtor is authorized to pay real estate broker commissions in an amount not more than 5.00 percent of the actual purchase price upon consummation of the sale: a 2.5

percent commission shall be paid to Chapter 13 Debtor's broker, Navigate Realty, and a 2.5 percent commission shall be paid to Buyer's broker, Excel Realty & Mortgage.

- E. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Chapter 13 Debtor. Within fourteen days of the close of escrow, the Chapter 13 Debtor shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow.

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 6004(h) is waived for cause.

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 September 22, 2020. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Objection to Notice of Mortgage Payment 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 Objection to Notice of Mortgage Payment is sustained.</p>

Josephine A. Parra, the Chapter 13 Debtor, ("Objector") objects to the Notice of Mortgage of Payment Change filed by U.S. Bank, N.A. ("Creditor"), on October 3, 2018. Debtor asserts that the Notice of Mortgage Payment Change filed on October 3, 2018 is incorrect.

DISCUSSION

On September 2011, Debtor agreed to a loan modification with step-up payments. On November 1, 2017 the monthly principal and interest payments totaled \$1,688.42, and the final step-up increase was on November 1, 2018 with the monthly principal and interest payments of \$1,816.62. Thus, Debtor states that the payments starting on November 2018 should be \$2,387.34 (principal and interest of \$1,816.62 plus escrow \$570.72.)

Creditor's Notice increases the monthly mortgage to \$2,664.26, which increases the escrow payment on an "estimated" amount of \$847.64. Debtor asserts this is not the correct escrow amount.

Creditor filed a Response to Debtor's Objection. Dckt. 72. Creditor reviewed the Notice and agrees that the payment commencing with the November 11, 2018 payment should be \$2,387.34 [the principal and interest of \$1,816.62 plus the ongoing escrow of \$570.72]. Creditor is in the process of filing an amended payment change notice for the November 11, 2018 payment.

On October 7, 2020, Creditor filed an Amended Notice of Mortgage Payment Change with the correct new total of \$2,387.34. Docket Entry (doc) 10.

Based on the evidence before the court, the Objection to the Notice of Mortgage of Payment Change is sustained.

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 Notice of Mortgage of Payment Change of U.S. Bank, N.A. (“Creditor”), filed in this case by Josephine A. Parra, the Chapter 13 Debtor, (“Objector”) having been presented to the court, Creditor having filed a response concurring with the Debtor’s calculation of the mortgage payment and filing an Amended Notice of Mortgage Payment Change, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to the Notice of Mortgage of Payment Change is sustained and the monthly payment on Creditor’s Secured Claim commencing November 1, 2018 and continuing thereafter is \$2,387.34 (principal and interest of \$1,816.62 plus escrow \$570.72.)

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 14, 2020. 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).

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

The debtor, Anthony M. Moseley ("Debtor") seeks confirmation of the Modified Plan to cure default for the months of July and August 2020 due to a short term payment suspension granted by Wells Fargo, a creditor being paid as Class 2 in my plan; and top account for increase in expenses resulting from COVID-19. Declaration, Dckt. 47. The Modified Plan provides:

1. \$1,158.16 per month for 12 months (All missed payments through and including August 25, 2020 are hereby excused),
2. \$1,550.00 per month for 32 months (commencing September 25, 2020)
3. \$1,100.00 per months for 28 months (reduction upon completion of payments to Wells Fargo's claim 2-1), and
4. a sixty (60) percent dividend to unsecured claims totaling \$57,579.

Modified Plan, Dckt. 44. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on October 6, 2020. Dckt. 52. Trustee opposes confirmation of the Plan on the basis that:

- A. The Plan will exceed the amount of months proposed.
- B. The Plan and the Motion propose differing commitment periods.
- C. Debtor fails to indicate the status of funds not remitted by Debtor for July and August.

DISCUSSION

Feasibility

According to the Chapter 13 Trustee, the Plan will complete in 78 months due to the proposed payments totaling \$80,400.00, and this amount less Trustee fees of approximately \$4,582.80, leaves \$75,817.20 available to pay creditors, but \$80,757.04 is required. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

Commitment Periods

Trustee notes that the Plan states different commitment periods. Under Section 2.03, the commitment periods indicates 84 months, whereas Section 7 indicates 83 months.

Prior Delinquency

Debtor does not provide an explanation for the states of the funds that were not remitted during the July and August months, nor does Debtor provide an explanation for his prior delinquency of \$1,645.64 through June 2020. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

At the hearing **XXXXXXX**

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

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Anthony M. Moseley ("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.

31. [11-37473-E-13](#) **RAUL/MARTHA SOLORIO** **MOTION TO AVOID LIEN OF**
[MJH-2](#) **Mark Hannon** **REDWOOD CREDIT UNION**
9-29-20 [76]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditor, creditors, and Office of the United States Trustee on September 29, 2020. By the court’s calculation, 21 days’ notice was provided. 14 days’ notice is required.

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

The Motion to Avoid Judicial Lien is granted.
--

This Motion requests an order avoiding the judicial lien of Redwood Credit Union (“Creditor”) against property of the debtor, Raul Solorio and Martha Solorio (“Debtor”) commonly known as 1439 Langley Way, Suisun City, Solano County, California (“Property”).

A judgment was entered against Debtor in favor of Creditor in the amount of \$19,541.69. Exhibit A, Dckt. 79. An abstract of judgment was recorded with Solano County on June 23, 2011, that encumbers the Property. *Id.* ^{FN.1.}

FN. 1. In the Points and Authorities Counsel states that a homestead exemption of \$100,000 has been claimed. It appears that when Schedule C was completed and filed by Debtor’s prior counsel the full

amount of the homestead exemption was not claimed, but only an amount equal to the then judgment amount. Fortunately, the claim secured by the senior lien so grossly exceeds the value of Property, Debtor's under claiming of the exemption does not prevent the full avoidance of this lien.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$300,00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total \$555,950 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(5) in the amount of \$19,541.69 on Amended Schedule C. Dckt. 84.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor's exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT-DRAFTED ORDER

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

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

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

IT IS ORDERED that the judgment lien of Redwood Credit Union, California Superior Court for Solano County Case No. FCM120606, recorded on June 23, 2011, Document No. 201100055790, with the Solano County Recorder, against the real property commonly known as 1439 Langley Way, Suisun City, Solano County, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

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

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 Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 22, 2020. By the court's calculation, 28 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

At the hearing, **xxxxxx**

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

<p>The Motion to Sell Property is granted.</p>

The Bankruptcy Code permits Odete Alves Cabral, Chapter 13 Debtor, ("Movant") to sell property under the confirmed plan after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here, Movant proposes to sell the real property commonly known as 3021 Turnbuckle Circle, Elk Grove, California ("Property").

The proposed purchaser of the Property is Lavonna Schrock, and the summarized terms of the sale are (the complete terms of the sale are in the Purchase Agreement filed as Exhibit A, Dckt. 57):

- A. Sales price of \$435,000.00 with close of escrow to occur 60 days after acceptance.
- B. Property sold as-is, no repairs to be done by seller.
- C. Sale contingent on court's approval.
- D. Escrow fee split 50/50 between seller and buyer. Seller to pay for owner's title insurance, county transfer tax, city transfer tax, and HOA

transfer fee and other related document fees. Buyer to pay for the one-year home warranty plan.

Trustee's Response

On October 6, 2020, Trustee filed a Response indicating non-opposition to the terms of the sale but updates the court as to the status of the Plan noting that the plan calls for the Trustee to pay the arrears claim on the property which has a balance of \$7,701.17, and the Trustee is prepared to submit his check into escrow to do so; and one unsecured claim for \$548.31 to Franchise Tax Board remains outstanding, as well as \$1,090.69 in attorney fees. Dckt. 62. Additionally, Debtor is delinquent \$7,110.26 under the plan where \$3,737.97 of that amount would go to delinquent post-petition mortgage payments. *Id.*, at 2.

Creditor's Non-Opposition

On October 14, 2020, Creditor filed a Non-Opposition to the sale so long as their lien is paid off in full satisfaction of the debt and requests the following language be added to the Order granting Debtor's Motion to Sell:

The loan secured by a first lien on real property located at 3021 Turnbuckle Circle, Elk Grove, CA 95758 will be paid in full as of the date of the closing of the sale.

Dckt. 65, at 2.

DISCUSSION

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because pay the Chapter 13 plan at a 100% dividend to all creditors.

Movant has estimated that a 2.5 percent broker's commission from the sale of the Property to Seller's broker will equal approximately \$10,875.00. Movant has estimated that a 2.5 percent broker's commission from the sale of the Property to Buyer's broker will equal approximately \$10,875.00. As part of the sale in the best interest of the Estate, the court permits Movant to pay each broker an amount not more than 2.5 percent commission.

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

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

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

~~IT IS ORDERED~~ that Odete Alves Cabral, Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Lavonna Schrock or nominee ("Buyer"), the Property commonly known as 3021 Turnbuckle Circle, Elk Grove, California ("Property"), on the following terms:

- ~~A. The Property shall be sold to Buyer for \$435,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dekt. 57, and as further provided in this Order.~~
- ~~B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.~~
- ~~C. Chapter 13 Debtor is authorized to execute any and all documents reasonably necessary to effectuate the sale.~~
- ~~D. Chapter 13 Debtor is authorized to pay a real estate broker's commission in an amount not more than 5.0 percent of the actual purchase price upon consummation of the sale, with 2.5 percent commission shall be paid to Chapter 13 Debtor's broker, Keller Williams Realty, and 2.5 percent commission shall be paid to Buyer's broker, Re/Max Gold.~~
- ~~E. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Chapter 13 Debtor. Within fourteen days of the close of escrow, the Chapter 13 Debtor shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow.~~

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 8, 2020. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(g) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Amended Plan is XXXXX.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Subsequent to the filing of this Motion, the debtors, Anthony Satoya Bautista and Thelma Tagle Bautista ("Debtor") filed a Third Amended Plan. Dckt. 69. Filing a new plan is a *de facto* withdrawal of the pending plan.

However, Debtor has not filed a corresponding Motion to Confirm the Third Modified Plan. Instead, Debtor seeks to use the instant Motion to confirm the Third Amended Plan. Debtor is to file a Motion to Confirm the Plan and set it for hearing.

The Motion to Confirm the Second Modified Plan is denied as moot, 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 Motion to Confirm the Second Amended Chapter 13 Plan filed by the debtors, Anthony Satoya Bautista and Thelma Tagle Bautista (“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 as moot, 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 Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 2, 2020. By the court's calculation, 48 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 <u>granted</u>.</p>
--

The debtor, Juan Alfonso Almanza ("Debtor") seeks confirmation of the Modified Plan so that Debtor can cure default after his employment was affected by COVID-19 and he was unable to sell or show any houses during the initial outbreak and his Uber job also stopped. Declaration, Dckt. 69. The Modified Plan provides for \$1,200 monthly plan payments for 71 months commencing September 2020, and a 100 percent dividend to unsecured claims totaling 55,715.65. Modified Plan, Dckt. 70. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on October 6, 2020. Dckt. 77. Trustee opposes confirmation of the Plan on the basis that:

- A. Plan has differing commitment periods.
- B. There are unexplained increases and decreases in Debtor's Supplemental Schedules.

DISCUSSION

Commitment Period

Trustee notes that the Plan states different commitment periods. Under Section 2.03, the commitment periods indicates 84 months, whereas Section 7 indicates 83 months.

Debtor filed a Response and suggests that the discrepancy in the commitment period be corrected in the Order confirming the plan:

“The amount of \$6,265.00 has been paid through August 2020. Plan payments of \$1,200.00 will begin September 25, 2020 for 72 months.”

Reply, Dckt. 80, ¶ 1.

Supplemental Schedules

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Trustee notes several unexplained discrepancies between Debtor’s Declaration and the Amended Schedule I and J. First, although Debtor’s net income as reflected in the Supplemental Schedule I filed on September 3, 2020 shows that it has increased, Debtor testifies that he has earned no money selling homes or driving for Uber, but that his wife has obtained a job with the State and her business income is less steady. Moreover, the schedule reflects an increase in insurance deduction for Debtor and non-filing spouse, their business income has decreased for both Debtor and non-filing spouse.

Trustee also notes that the increases in food, medical expenses and insurance deductions have gone unexplained as well as the reduction in taxes for non-filing spouse’s business income.

As to these concerns, Debtor’s Counsel notes the Debtor is proposing a plan that will pay a 100% dividend to all creditors, and Debtor is current under the terms of the proposed plan. Dckt. 80, ¶ 2. Thus, the plan is feasible and confirmable. *Id.*

The Trustee raising valid clearly identifying issues and focusing them for the court’s consideration, this is a case in which a COVID 2020 economic disruption confirmation can be made based on the information provided by Debtor and Counsel for Debtor. With a 100% unsecured dividend plan, the court grants the motion and confirms the Plan.

The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Juan Alfonso Almanza (“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 September 2, 2020 as amended with the following language,

“The amount of \$6,265.00 has been paid through August 2020.
Plan payments of \$1,200.00 will begin September 25, 2020 for
72 months.”

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

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

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

Sufficient Notice **Not** Provided. The Proof of Service includes the attached mailing matrix with all parties. A review of the mailing matrix filed indicates that it belongs to Case No. 20-20091. Thus, the court is unable to determine whether the proper parties were served.

At the hearing, **xxxxxx**.

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

The Motion to Confirm the Modified Plan is granted.

The debtors, Marcis Allan Beutler and Marti Leeann Beutler ("Debtors") seek confirmation of the Modified Plan to cure the delinquency from their First Modified Plan. Declaration, Dckt. 88. The Modified Plan provides for monthly plan payments of \$1,375.00 for months 39 through 60 and a 100 percent dividend to unsecured claims, with a remaining balance totaling \$2,997.72. Modified Plan, Dckt. 90. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on October 20, 2020. Dckt. 95. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor's supplemental schedules are improperly filed as exhibits only.

DISCUSSION

Failure to File Schedules I and J

Debtors' supplemental Schedules I and J were filed as an Exhibit only. Dckt. 89. Trustee requests that this motion be denied unless this matter is addressed. Dckt. 95.

Debtor filed a Reply on October 7, 2020 asserting that the Supplemental Schedules I and J were electronically have been filed in order to correct for the deficient evidentiary record. Dckt. 100.

Trustee filed an amended Response on October 9, 2020 reporting no opposition now that the supplemental schedules have been properly filed with the docket. Dckt. 102.

~~The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.~~

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

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

~~The Motion to Confirm the Modified Chapter 13 Plan filed by the debtors, Marcis Allan Beutler and Marti Leeann Beutler ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~**IT IS ORDERED** that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on September 15, 2020, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor (*pro se*) on September 24, 2020. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

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

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

- A. Debtor failed to appear at the Meeting of Creditors.
- B. Debtor has failed to provide complete Chapter 13 documents and proposed a Plan that is lacking in detail.
- C. Debtor filed two previous Chapter 13 cases that were dismissed.
- D. Debtor failed to provide tax returns.
- F. Debtor failed to provide the Trustee with business documents.
- G. The Plan payment is insufficient.

DISCUSSION

Trustee's objections are well-taken.

Failure to Appear at 341 Meeting

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 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).

Blank Plan

11 U.S.C. § 1325(a)(1) provides for confirmation of a plan if it complies with Chapter 13 provisions and other applicable Code provisions. Here, Debtor has proposed a plan that is woefully lacking in compliance with the Bankruptcy Code. Debtor has not proposed a plan payment nor the duration of the plan payments. Further, debtor failed to list the interest rate on the arrears and an arrearage dividend. Additionally, Debtor has failed to list a percentage dividend and total amount to unsecured creditors. The Plan does not comply with 11 U.S.C. § 1325(a)(1).

Bad Faith: Failure to Disclose Prior Bankruptcy Case

Trustee reports that Debtor failed to disclose a prior bankruptcy case (Case No. 20-22339, filed on May 1, 2020) on the petition. Debtor was required to report any bankruptcy cases filed within the prior eight years. Debtor reported one case (Case No. 19-27664), but he did not report Case No. 20-22339.

Serial Filer

Debtor filed a previous Chapter 13 petition on December 12, 2019, and was dismissed on March 7, 2020. Debtor filed another Chapter 13 petition on May 1, 2020, and was dismissed on May 19, 2020. Debtor's recent bankruptcy cases have implications for the duration of the automatic stay, *see* 11 U.S.C. § 362(c)(3), but is not by itself reason to deny confirmation.

Failure to Provide Tax Returns

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

Failure to File Documents Related to Business

Debtor has failed to timely provide Trustee with business documents including:

- A. Questionnaire,
- B. Two years of tax returns,

- C. Six months of profit and loss statements,
- D. Six months of bank account statements, and
- E. Proof of license and insurance or written statement that no such documentation exists.

11 U.S.C. §§ 521(e)(2)(A)(I), 704(a)(3), 1106(a)(3), 1302(b)(1), 1302(c); FED. R. BANKR. P. 4002(b)(2) & (3). Debtor is required to submit those documents and cooperate with Trustee. 11 U.S.C. § 521(a)(3). Without Debtor submitting all required documents, the court and Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325.

Insufficient Plan Payments

Trustee alleges that the Plan is not feasible. 11 U.S.C. § 1325(a)(6). The proposed \$0.00 monthly payments for the balance of the plan term are insufficient to pay Trustee's fee, administrative fees, the Class 1 monthly contract installment, the Class 1 dividend, and the Class 2 dividends. Thus, the Plan may not be confirmed.

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

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

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

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

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

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 (*pro se*), Chapter 13 Trustee, and Office of the United States Trustee on September 17, 2020. 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 -----

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

1900 Capital Trust III, by U.S. Bank National Association, not in its individual capacity but solely as Certificate Trustee ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

- A. Plan provides for Creditor where no automatic stay is in effect.
- B. Debtor's Plan is not proposed in good faith.
- C. Debtor's Plan is not feasible.
- D. Debtor's Plan improperly lists Creditor in Class 2(A).

DISCUSSION

Creditor's objections are well-taken.

Automatic Stay

Pursuant to 11 U.S.C. § 362(c)(4)(A)(I), the provisions of the automatic stay do not go into effect upon Debtor filing the instant case, if Debtor has filed two or more single or joint cases of the debtor were pending within the previous year but were dismissed.

Debtor has two prior filings within the year. This is Debtor's third bankruptcy petition pending in the past year with the prior two cases having been dismissed. Debtor's prior bankruptcy cases (Nos. 19-27664 and 20-22339) were dismissed on March 7, 2020, and May 19, 2020, respectively. *See* Order, Bankr. E.D. Cal. No. 19-27664, Dckt. 36, March 9, 2020; Order, Bankr. E.D. Cal. No. 20-22339, Dckt. 11, May 19, 2020. The instant bankruptcy was thereafter filed on August 10, 2020. Thus, no stay went into effect on the filing of the instant case. Debtor did not file a Motion to Impose the Automatic Stay.

Feasibility

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Creditor argues that it appears that the Debtor has a monthly disposable income of approximately \$237.00. However, the Debtor will be required to apply approximately \$849.20 towards Creditor's claim in order to cure Creditor's pre-petition arrearage. Thus, the Debtor lacks the necessary monthly disposable income to fund the Plan.

Additionally, Debtor improperly lists Creditor as both a Class 1 and a Class 2(A) claim. Creditor is correctly listed as Class 1 claim but should not be listed as a Class 2(A) where Debtor is not modifying the claim and the loan relating to Creditor's secured claim matures on January 1, 2037, after the term of the Debtor's Plan.

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

The court has sustained the Chapter 13 Trustee's Objection to Debtor's Plan. Thus, the Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). Creditor's Objection is sustained.

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 1900 Capital Trust III, by U.S. Bank National Association, not in its individual capacity but solely as Certificate Trustee ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

38. [20-23890-E-13](#) **RICARDO CORTEZ** **OBJECTION TO CONFIRMATION OF**
[DPC-1](#) **Timothy Walsh** **PLAN BY DAVID P. CUSICK**
9-21-20 [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 September 21, 2020. By the court's calculation, 29 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the 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 -----
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The Objection to Confirmation of Plan is sustained.
--

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

- A. Debtor has failed to file tax returns for the four year period prior to the filing of the petition.
- B. Plan exceeds the maximum amount of time allowed by the code.

DISCUSSION

Trustee's objections are well-taken.

Failure to File Tax Returns

Debtor admitted at the Meeting of Creditors that the federal income tax returns for the four years preceding the filing of the petition. Filing of the return is required. 11 U.S.C. §§ 1308, 1325(a)(9). Failure to file a tax return is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Plan Exceeds the Allowable Amount of Time

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to Trustee, the Plan will complete in 115 months due to the amount of priority claim filed to date. The Plan estimates priority creditors would total \$15,000 where the actual amount filed to date is \$56,059.96. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

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

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, and Debtor's Attorney on September 23, 2020. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.
--

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

- A. Plan exceeds the maximum amount of time allowed by the code.
- B. Creditor with secured claim has been mis-classified as Class 4 claim.
- C. Debtor failed to file tax returns.

DISCUSSION

Trustee's objections are well-taken.

Plan Exceeds the Allowable Amount of Time

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to Trustee, the Plan will complete in 177 months due to the claim filed by 1 Oak Ventures Step Fund LLC with \$128194.64 claim in arrearage where the plan estimates only \$43,283.00. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

Mis-classification of Secured Claim

Debtor's Plan classifies creditor PHH Mortgage Corporation as a Class 4 claim to be paid directly by the Debtor where creditor's proof of claim asserts Debtor is delinquent \$5,479.01 in pre-petition arrearage. Proof of Claim 1-2.

Failure to File Tax Returns

According to Trustee, he has "held open" the meeting of creditors to allow for Debtor to file the tax returns for 2017 and 2019. Filing of the return is required. 11 U.S.C. §§ 1308, 1325(a)(9). Failure to file a tax return is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

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

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor's Attorney and Chapter 13 Trustee on September 15, 2020. By the court's calculation, 35 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the 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>

1 Oak Ventures Step Fund ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

- A. Plan does not provide for paying Creditor's \$128,194.64 pre-petition arrearage.
- B. Debtor does not projected disposable income to fund the Plan.

Housekeeping Matters

Movant did not specified clearly whether the Objection is noticed according to Local Bankruptcy Rule 9014-1(f)(1) or (f)(2). The Notice of Motion states that a hearing will be held and that any party who wishes to oppose the objection must file a timely written objection. The court treats the Objection as being noticed according to Local Bankruptcy Rule 9014-1(f)(1). 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).^{FN.1}

FN.1. The court notes that the notice provided does not meet the standard of Local Bankruptcy Rules 9014-1(d)(3)(B)(ii) and (iii). The Notice fails to include a statement about the viewability of tentative rulings on the court's website. Because the notice complies substantially with all requirements, the court will 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).

Additionally, Federal Rules of Bankruptcy Procedure 7004(b)(9) requires service on the Debtor and his attorney; service on the Debtor's attorney alone is insufficient to require the Debtor to answer and defend. *In re Cossio*, 163 B.R. 150, 154 (B.A.P. 9th Cir. 1994)), *aff'd*, 56 F.3d 70 (9th Cir. 1995); *In re Bloomingdale*, 137 B.R. 351, 354 (Bankr.C.D.Cal.1991); *In re Cole*, 142 B.R. 140, 143 (Bankr. N.D. Tex. 1992); *In re Love*, 242 B.R. 169, 171 (E.D. Tenn. 1999), *aff'd*, 3 F. App'x 497 (6th Cir. 2001); *In re Hall*, 222 B.R. 275, 277 (Bankr. E.D. Va. 1998).

Service here was made solely on Debtor's counsel, Mary Ellen Terranella. Dckt. 25, 27.

At the hearing, **xxxxxx**.

DISCUSSION

Creditor's objections are well-taken.

Failure to Cure Arrearage of Creditor

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts \$128,194.64 in pre-petition arrearage. The Plan does not propose to cure those arrearage. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearage.

Failure to Afford Plan Payment

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Creditor argues Debtor does not have sufficient income to make plan payments. Debtor asserts having \$4,359 in combined monthly income, and \$1,600 in monthly net income in Schedule J. Dckt. 1, at 27, 29. However, according to his Statement of Financial Affairs, Debtor has made only \$18,620.00 in 7 months. *Id.*, at 31. Moreover, under Form 122C-1 Debtor states having an average monthly income of \$3,553.00. *Id.*, at 39. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Trustee's objection having been sustained, the Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). Creditor's Objection is also sustained.

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 1 Oak Ventures Step Fund (“Creditor”) holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

41. [16-27697-E-13](#) **BRIAN OKAMOTO** **MOTION TO MODIFY PLAN**
[PGM-7](#) **Peter Macaluso** **9-3-20 [162]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on September 3, 2020. By the court’s calculation, 47 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 XXXXX.

The debtor, Brian Mitchell Okamoto (“Debtor”) seeks confirmation of the Modified Plan account for financial hardship due to Covid-19 after their income was reduced by 9.23%. Declaration, Dckt. 165. The Modified Plan provides monthly plan payments of \$3,350 for 12 months commencing

September 25, 2020, followed by monthly plan payments of \$3,725.00 for 27 months, and a 0.0 percent dividend to unsecured claims totaling 55,250.19. Modified Plan, Dckt. 164. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on October 6, 2020. Dckt. 171. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor is delinquent in plan payments.
- B. Debtor failed to file Supplemental Schedules I and J.

DISCUSSION

Delinquency

The Chapter 13 Trustee asserts that Debtor is \$3,350.00 delinquent in plan payments, which represents one month of the proposed \$3,350.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Supplemental Schedules I and J

Trustee requests that Debtor file Supplemental Schedules I and J in support of current income and expenses. Debtor's Declaration states that the plan modification is due to reduction in income by 9.23%, yet, Trustee argues that Debtor has failed to explain how he will afford the proposed increased plan payment in month 58 of the plan.

Debtor filed a Reply asserting that a partial payment of \$1,460 was made on October 7, 2020 and will become current prior to hearing. Dckt. 176. Additionally, Debtor filed Supplemental Schedules I and J on October 12, 2020 which show Debtor's latest income reduction. Dckt. 175.

At the hearing, **xxxxxx**.

~~————— The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.~~

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

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

~~————— The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Brian Mitchell Okamoto ("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 September 3, 2020, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

FINAL RULINGS

42. [15-28301-E-13](#) **RICHARD/PAULA CUMMINGS** **CONTINUED MOTION TO MODIFY**
[MET-3](#) **Mary Ellen Terranella** **PLAN**
2-29-20 [\[106\]](#)

Final Ruling: No appearance at the October 20, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on February 29, 2020. By the court's calculation, 59 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). 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.

The debtors, Richard Jay Cummings and Paula Rae Cummings ("Debtors") seek confirmation of the Modified Plan to address the deficiencies due to Debtor Richard's retirement that led to Trustee's Motion to Dismiss, and now his sole source of income is Social Security in the amount of \$2,096.00 per month after retirement funds have been exhausted. Declaration, Dckt. 109. The Modified Plan provides \$2,417.00 per month for 52 months, \$1,679.00 per month for 7 months, and \$28,102.00 per month for 1 month, and a 0% percent dividend to unsecured claims totaling \$190,932.00. Modified Plan, Dckt. 108. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S RESPONSE

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response on March 30, 2020. Dckt. 116. Trustee requests that the court take the following into consideration:

- A. The Plan is dependent on the Debtors' obtaining a reverse mortgage on their property. However, Debtors failed to indicate when or with whom they are applying for this reverse mortgage.

DISCUSSION

Debtors filed a Reply to Trustee's Response indicating that they have applied for the reverse mortgage with Mortgage Marketing Masters. The process was delayed due to COVID-19 taking them three weeks to complete the required counseling session but have obtained their certificate of eligibility. The information is now with the mortgage company which is waiting on the finance company.

However, Debtors do not yet have loan approval or a closing date at this time. Debtors requests for the motion to modify be granted or, in the alternative, that the hearing on the motion be continued to allow Debtors to update the court as to the status of the application.

August 25, 2020 Hearing

Unfortunately, Debtor has not filed any further reports, motions, or other pleadings since the June 30, 2020 filled Status Report. No information is provided as to whether Debtor has diligently prosecuted the counseling session and seeking the reverse mortgage.

The proposed plan Modified Plan, Dckt. 108, requires Debtor to make the following payments:

\$2,417.00 per month for 52 months
\$1,679.00 per month for 7 months
\$28,102.00 per month for 1 month

Dckt. 108. There are no Class 1 secured claims, and in Class 2, the secured claims of Solano County Tax Collector and Wells Fargo Dealer Services. No other secured claims are provided for in the Plan, such as one to be paid from a reverse mortgage. The proposed Modified Plan does not include Debtor obtaining a reverse mortgage to fund the Modified Plan.

As stated in the Motion to Confirm Modified Plan (Dckt. 106), a modified plan was necessary because of the Debtor's defaults under the confirmed plan in this case. As stated by the Debtor:

8. The Chapter 13 Trustee filed a Motion to Dismiss Case on or about February 5, 2020 claiming debtor is delinquent in plan payments in the amount of \$11,530.00 and another plan payment, in the amount of \$2,925.00 will come due prior to the hearing on the motion to dismiss, for a total delinquency through February 25, 2020 of \$14,455.00. The debtors did fall behind in their payments, as Mr. Cummings retired from his trucking job in September 2016, after 33 years on the

job, at age 66. His sole source of income is Social Security of \$2,096.00 per month. The debtors have been struggling to make their plan payment and have exhausted all of Mr. Cummings' retirement to do so. The debtors intend to obtain a reverse mortgage of their home so as to supplement their income and pay off their Chapter 13 plan timely, with the October 2020 payment.

Motion, ¶ 8; Dckt. 106.

This Motion was filed on February 29, 2020. In the one-hundred and seventy-five days since filing the Motion to Confirm the Modified Plan, all that Debtor has done is file a Status Report saying that in June 2020 additional information was required from the lender, and it was provided to the lender in June 2020. Status Report, Dckt. 128. Since then, Debtor has been unable to file any other necessary motions, such as to incur debt on a reverse mortgage or modify the plan to extend the payment of the obligations to be paid thereunder.

While it is unfortunate that Debtor is now struggling on the shoals of monthly payment defaults in the final months of a sixty-month plan, it appears that they are unable to address those defaults.

Additionally, while proposing that there will be a lump sum payment in month sixty of the plan, Debtor does not actually commit in the proposed Modified Plan to obtaining a reverse mortgage to fund the plan. As written, the Debtor could get the money from any undisclosed source of funds or assets.

October 8, 2020 Trustee's Supplemental Response

Trustee filed a Response no longer opposing the modification under the circumstances of this case but notes that although Trustee has been advised that the refinance may be closing on October 6, 2020, Trustee has not yet received the lump sum. Dckt. 147. Moreover, Trustee has been advised that FHA/HUD regulations on reverse mortgages do not allow the payment of arrearage through Trustee funds into an escrow. *Id.*

October 20, 2020 Hearing

The Chapter 13 Trustee having provided the court with an updated report about how the Trustee is "adapting" to address the regulatory challenges being thrown up for the Trustee and Debtor to address, the court can grant the motion and confirm the Modified plan.

The proposed Modified Chapter 13 Plan complies with 11 U.S.C. § 1322, § 1325, and § 1329; the Motion is granted and the Plan is confirmed.

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

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 Modified Plan filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on February 29, 2020, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

43.	<u>20-23804-E-13</u> <u>DPC-1</u> 43 thru 44	MARVIN/JEANINE BURGESS Douglas Jacobs	OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE DAVID P. CUSICK 9-23-20 <u>[20]</u>
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Final Ruling: No appearance at the October 20, 2020 hearing is required.

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 September 23, 2020. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). 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.

The hearing on the Objection to Confirmation of Plan is continued to 2:00 p.m. on November 10, 2020.

If the Trustee's grounds for objection are resolved through the continued First Meeting of Creditors and other information provided by Debtor, the Trustee may lodge with the court an order dismissing this Objection (no ex parte motion required).

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

A. Debtor failed to submit proof of his social security number.

B. Debtor filed inaccurate Chapter 13 documents.

DISCUSSION

Trustee's objections are well-taken.

Failure to Provide Proof of Social Security Number

Debtor did not provide proof of his social security number to the Trustee at the Meeting of the Creditors. *See* FED. R. BANKR. P. 4002(b)(1). Debtor has failed to submit proof of his social security number. Therefore, Debtors have failed to cooperate with Trustee as necessary to enable the Trustee to perform his duties. *See* 11 U.S.C. § 521(a)(3).

Debtor filed a reply to Trustee's Objection on September 30, 2020 asserting that Debtor will have his social security card at the continued Meeting of Creditors scheduled to October 22, 2020. Dckt. 28, at ¶ 3.

Chapter 13 Documents Inaccurate

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor may not have listed all assets in Schedules A/B. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

In his Reply, Debtor asserts that the schedules are being updated. Dckt. 28, at ¶ 4.

The court continues the hearing on the Motion to Confirm to 2:00 p.m. on November 10, 2020, to allow Debtor to attend the continued Meeting of Creditors so that Debtor may provide proof of social security number and to allow Debtor the time to file Amended Schedules.

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

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

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

IT IS ORDERED that the hearing on the Objection to Confirmation of Plan is continued to 2:00 p.m. on November 10, 2020.

IT IS FURTHER ORDERED that if the Trustee's grounds for objection are resolved through the continued First Meeting of Creditors and other information provided by Debtor, the Trustee may lodge with the court an order dismissing this Objection (no *ex parte* motion required based on the Debtor's response and the specific facts and circumstances for this Contested Matter).

Final Ruling: No appearance at the October 20, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 1, 2020. By the court's calculation, 49 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.

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Cecilia Smith ("Debtor"), has filed evidence in support of confirmation. No opposition to the Motion has been filed by the Chapter 13 Trustee, David Cusick ("Trustee"), or by creditors. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

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

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

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

Chapter 13 Plan filed on September 1, 2020, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

45. [20-20308](#)-E-13 **RICHARD DE ROSA**
[WSS-3](#) **Steven Shumway**

**OBJECTION TO CLAIM OF INTERNAL
REVENUE SERVICE, CLAIM NO. 2
9-17-20 [80]**

CASE DISMISSED: 10/6/20

Final Ruling: No appearance at the October 20, 2020 hearing is required.

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

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

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

The Objection to Proof of Claim Number 2 of the Internal Revenue Service having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

Final Ruling: No appearance at the October 20, 2020 hearing is required.

Local Rule 9014-1(f)(2) Objection—No 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 September 21, 2020. By the court's calculation, 29 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the 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.

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Subsequent to the filing of this Objection, Debtor filed an Amended Plan and corresponding Motion to Confirm on September 26, 2020. Dckts. 22, 20. Filing a new plan is a de facto withdrawal of the pending plan. The Objection is sustained, and the plan is not confirmed.

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

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

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

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

Final Ruling: No appearance at the October 20, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 4, 2020. By the court’s calculation, 46 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtors, Jeffrey Eugene Clement and Rhiannon Marie Clement (“Debtor”), have filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Response indicating non-opposition on October 2, 2020. Dckt. 81. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtors, Jeffrey Eugene Clement and Rhiannon Marie Clement (“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 September 4, 2020, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

48.	<u>19-27823-E-13</u> <u>MET-1</u> 48 thru 49	GURBAX/USHA SUNAK Mary Ellen Terranella	MOTION TO AVOID LIEN OF CACH, LLC 9-9-20 [43]
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Final Ruling: No appearance at the October 20, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditor, and Office of the United States Trustee on September 9, 20. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

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

<p>The Motion to Avoid Judicial Lien is granted.</p>

This Motion requests an order avoiding the judicial lien of Cach, LLC ("Creditor") against property of the debtor, Gurbax Singh Sunak and Usha Rani Sunak ("Debtors") commonly known as 6216 Pebble Beach Drive, Vallejo, California ("Property").

A judgment was entered against Debtors in favor of Creditor in the amount of \$18,212.73. Exhibit A, Dckt. 47. An abstract of judgment was recorded with Solano County on April 25, 2013, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$575,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total \$401,000.00 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$175,000.00 on

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor's exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT-DRAFTED ORDER

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

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

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

IT IS ORDERED that the judgment lien of Cach, LLC, California Superior Court for Solano County Case No. FCM125278, recorded on April 25, 2013, Document No. 201300041402, with the Solano County Recorder, against the real property commonly known as 6216 Pebble Beach Drive, Vallejo, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

Final Ruling: No appearance at the October 20, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditor, and Office of the United States Trustee on September 9, 2020. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

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

<p>The Motion to Avoid Judicial Lien is granted.</p>

This Motion requests an order avoiding the judicial lien of Leonel Cortez, Jr. ("Creditor") against property of the debtor, Gurbax Singh Sunak and Usha Rani Sunak ("Debtor") commonly known as 6216 Pebble Beach Drive, Vallejo, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$175,000.00. Exhibit A, Dckt. 53. An abstract of judgment was recorded with Solano County on August 25, 2011, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$575,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total \$401,000.00 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$175,000.00 on Schedule C. Dckt. 1.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor's exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT-DRAFTED ORDER

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

court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Gurbax Singh Sunak and Usha Rani Sunak (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the judgment lien of Leonel Cortez, Jr., California Superior Court for Solano County Case No. FCS034703, recorded on August 25, 2011, Document No. 201100074914, with the Solano County Recorder, against the real property commonly known as 6216 Pebble Beach Drive, Vallejo, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

Final Ruling: No appearance at the October 20, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 6, 2020. By the court's calculation, 44 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.

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtors, Garret Ambrosio and Elaine Gabagat-Ambrosio ("Debtors"), have filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response indicating non-opposition on October 2, 2020. Dckt. 35. But noting that the Debtors are ahead in plan payments and as such the order should reflect the total paid into the plan as follows:

"\$9,396.00 total paid in through September 2020, \$430.00 per month for 37 months".

Id., at 2. Debtor filed a Reply agreeing to Trustee's correction and filing a proposed order as Exhibit A showing such correction. Dckts. 40, 41.

The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Garret Ambrosio and Elaine Gabagat-Ambrosio (“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 September 6, 2020, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

51.	<u>20-23835-E-13</u> <u>DPC-1</u>	ROYLEE/FLORENCE WOOLFORD Mikalah Liviakis	OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 9-21-20 [<u>12</u>]
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Final Ruling: No appearance at the October 20, 2020 hearing is required.

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 September 21, 2020. By the court’s calculation, 29 days’ notice was provided. 14 days’ notice is required.

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

The hearing on the Objection to Confirmation of the Plan is continued to 2:00 p.m. on October 27, 2020.

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

A. Debtors were unable to be examined at the First Meeting of Creditors.

DISCUSSION

Trustee's objections are well-taken.

Failed to Be Examined at 341 Meeting

Debtor appeared at the Meeting of Creditors held on September 17, 2020 but were unable to be examined by the hearing officer under oath as required pursuant to 11 U.S.C. § 343. Appearance is mandatory. *See* 11 U.S.C. § 343. Attempting to confirm a plan while failing to appear and be questioned by 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 continued Meeting of Creditors was continued to October 22, 2020 at 1:00 p.m. Trustee requests that the hearing on this Motion be continued until after the Meeting of Creditor.

The court finds that cause exists to grant Trustee's request and continues the hearing on this Objection to October 27, 2020 at 2:00 p.m to allow for Debtor to be examined.

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

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

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

IT IS ORDERED that the hearing on the Objection to Confirmation of the Plan is continued to 2:00 p.m. on October 27, 2020.

Final Ruling: No appearance at the October 20, 2020 hearing is required.

The Objection to Debtor's Claim of Exemptions is dismissed without prejudice.

David P. Cusick (“the Chapter 13 Trustee”) having filed an Ex Parte Motion to Dismiss the pending Objection on October 13, 2020, Dckt. 32; 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 Codessa Marie Terrell (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Objection is dismissed without prejudice, and the court removes this Objection from the calendar.

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

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

The Objection to Debtor’s Claim of Exemptions filed by David P. Cusick (“the Chapter 13 Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Objection itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 32, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Debtor’s Claim of Exemptions is dismissed without prejudice.

Final Ruling: No appearance at the October 20, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 9, 2020. By the court's calculation, 41 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.

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtors, Joshua Lynn Norman and Connie Lynn Norman ("Debtor"), have filed evidence in support of confirmation. the Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response indicating non-opposition on October 2, 2020. Dckt. 37. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtors, Joshua Lynn Norman and Connie Lynn Norman ("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 September 9, 2020, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

54. [20-21045-E-13](#) **ANN CONRAD**
[RK-1](#) **Richard Kwun**

MOTION TO CONFIRM PLAN
8-28-20 [\[50\]](#)

Final Ruling: No appearance at the October 20, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 28, 2020. By the court's calculation, 53 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.

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Ann Athlene Conrad ("Debtor"), has filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on October 6, 2020. Dckt. 65. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Ann Athlene Conrad (“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 August 28, 2020, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

55. <u>20-23848-E-13</u> JASON GRAVES <u>DPC-1</u> Matthew DeCaminada	OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 9-21-20 <u>[13]</u>
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Final Ruling: No appearance at the October 20, 2020 hearing is required.

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 September 21, 2020. By the court’s calculation, 29 days’ notice was provided. 14 days’ notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the 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.

The Objection to Confirmation of Plan is sustained.
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The Chapter 13 Trustee, David Cusick (“Trustee”), opposes confirmation of the Plan on the basis that Debtor failed to appear at the meeting of creditors.

DISCUSSION

Trustee’s objections are well-taken.

Failure to Appear at 341 Meeting

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 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).

Debtor's Motion to Dismiss

On October 4, 2020 Debtor filed a Motion to Dismiss the case. Dckt. 17.

Debtor having failed to attend the Meeting of Creditors and filing a Motion to Dismiss, the Objection is sustained, and the Plan is not confirmed.

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

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

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

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

Final Ruling: No appearance at the October 20, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 26, 2020. By the court’s calculation, 46 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

The Motion to Confirm the Modified Plan is denied as moot.

The debtor, Michael Jon Smirl and Brandi Victoria Smirl (“Debtor”) seek confirmation of the Modified Plan to catch up with plan payments after falling behind due to a drastic reduction of work hours due to COVID-19 but they are now back to working full time. Declaration, Dckt. 53. The Modified Plan provides for monthly payments of \$2,125.15 commencing June 2020 for months 11 through 21, followed by monthly payments of \$2,274.00 for months 22 through 60, and a 0 percent dividend to unsecured claims totaling \$16,906.48. Modified Plan, Dckt. 55. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on July 28, 2020. Dckt. 78. Trustee opposes confirmation of the Plan on the basis that:

- A. The plan exceeds the maximum period (60 months) amount allowed under the Bankruptcy Code.
- B. Class 1 arrearage amount must be clarified.

C. Debtors have failed to file Supplemental Schedules.

DISCUSSION

Feasibility

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). According to the Chapter 13 Trustee, the Plan will complete in approximately 63 months due to the proposed plan payments only paying \$108,461.35, where the amount required to pay creditors is \$100,424.15, and Trustee fees will total approximately \$10,846.14.

Trustee notes that the plan payments would have to increase by \$45.00 for the remaining 49 months or increase the payment by \$58.00 beginning in month 22.

Class 1 Arrears

Trustee is unable to fully comply with Section 3.07 of the Plan as the proposed plan states that there is a post-petition arrearage for Class 1 Select Portfolio Servicing in the amount of \$4,279.86 but Trustee's accounting shows that the amount due for the unpaid installments is \$4,279.80.

The Trustee also notes that there are stated to be \$20,335.39 in post-petition arrears to be cured, but that these are actually pre-petition arrears (there appearing to be a clerical error), but that this may be corrected in the order confirming the plan.

Supplemental Schedules

Trustee notes that at the Meeting of Creditors Debtors had informed Trustee that their expenses had been detailed as separate in the prior Schedules because they were in the process of separating. Trustee is uncertain if this information is still accurate as the Declaration in support of the proposed plan states that they have not filed an amended budget on the basis that they are resuming their current confirmed payments and will be able to afford the increased payment in month 22 due to a 401k loan payoff. Moreover, no change of address has been for either debtor.

Trustee asserts that Debtors have failed to show that their plan complies 11 U.S.C. §1325(a)(6).

August 11, 2020 Hearing

At the hearing, the Trustee reported that no payment was made by the Debtor on July 25, 2020. The Trustee concurred that the hearing should be continued to allow Debtor to continue to address these deficiencies in light of their efforts to date.

August 25, 2020 Hearing

At the hearing, counsel for the Debtor reported that the July payment was delivered to the Trustee on August 20, 2020. The Trustee confirmed that a payment of \$1,200.00, which did not cure the delinquency, and there is the August \$2,125.15 payment that is due, plus a remaining \$900 delinquency.

Debtor's counsel and the Trustee agreed to continue the hearing to afford the Debtor the opportunity to complete the cure in this case for the proposed Modified Plan.

New Plan Filed

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Subsequent to the filing of this Motion, Debtor filed a Third Modified Plan and corresponding Motion to Confirm on September 14, 2020. Dckts 96, 92. Filing a new plan is a de facto withdrawal of the pending plan. The Motion to Confirm the Modified Plan is denied as moot, 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 Motion to Confirm the Modified Chapter 13 Plan filed by the debtors, Michael Jon Smirl and Brandi Victoria Smirl ("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 as moot, and the proposed Chapter 13 Plan is not confirmed.

Final Ruling: No appearance at the October 20, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 14, 2020. 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 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.

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtors, Michael Jon Smirl and Brandi Victoria Smirl ("Debtor"), have filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on October 6, 2020. Dckt. 99. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Michael Jon Smirl and Brandi Victoria Smirl ("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 September 14, 2020, is confirmed. Debtor's Counsel shall

prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

58. [19-24657](#)-E-13 **MICHAEL/BRANDI SMIRL** **CONTINUED MOTION TO DISMISS**
[DPC-2](#) **Gabriel Liberman** **CASE**
6-3-20 [44]

Final Ruling: No appearance at the October 20, 2020 hearing is required.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on June 3, 2020. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss is denied, and the case shall proceed.

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtors, Michael Jon Smirl and Brandi Victoria Smirl (“Debtor”), are \$6,375.45 delinquent with monthly plan payments of \$2,125.15.

DEBTOR’S RESPONSE

Debtor filed a Response on June 16, 2020. Dckt. 48. Debtor states the delinquency occurred due to a loss of income resulting from the COVID-19 pandemic. Declaration, Dckt. 49. Debtor intends to file a modified plan to extend the length of the plan under the CARES Act prior to the hearing date.

DISCUSSION

Debtor is delinquent in plan payments. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

A hearing on a motion to confirm a modified plan is scheduled. The Trustee agreed to a continuance of a hearing on the Motion to Dismiss.

August 11, 2020 Hearing

At the hearing, the Trustee agreed to continue the hearing in light of the Debtor working to

address the plan confirmation issues.

August 25, 2020 Hearing

At the continued hearing, the Parties agreed to continue the hearing in light of the Debtor's continuing prosecution of the proposed Modified Plan in this case.

October 20, 2020 Hearing

The court having granted Debtor's Motion to Modify, Trustee stating no opposition to Debtor's Plan (Dckt. 99), and Debtor now current on plan payments, there is cause for the court to deny Trustee's Motion to Dismiss.

The Motion to Dismiss is denied, and the bankruptcy case shall proceed.

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

IT IS ORDERED that the Motion to Dismiss is denied without prejudice.

Final Ruling: No appearance at the October 20, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, and Office of the United States Trustee on June 29, 2020. By the court’s calculation, 43 days’ notice was provided. 28 days’ notice is required.

The Motion for Relief from the Automatic Stay 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 Motion for Relief From the Automatic Stay is denied without prejudice.</p>
--

U.S. Bank National Association, as Trustee for MASTR Asset Backed Securities Trust 2006-WMC3, Mortgage Pass-Through Certificates, Series 2006-WMC3 (“Movant”) seeks relief from the automatic stay with respect to Michael Jon Smirl and Brandi Victoria Smirl’s (“Debtor”) real property commonly known as 7633 Commonwealth Drive, Antelope, California (“Property”). Movant has provided the Declaration of Maria G. Fritz to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant argues Debtor has not made three (3) post-petition payments, with a total of \$4,279.80 in post-petition payments past due. Declaration, Dckt. 66.

TRUSTEE’ S RESPONSE

Trustee filed a Response on July 23, 2020. Dckt. 75. Trustee asserts that Debtor is delinquent \$6,375.45, where Debtor has paid to date a total of \$17,001.20. *Id.* Movant is included in Class 1 of the confirmed Plan and Trustee has disbursed a total of \$11,412.80 to Movant. *Id.* Debtor filed a modified Plan on June 26, 2020, which proposes to add \$4,279.86 in post-petition arrearage to Class 1 with a monthly dividend of \$85.60. *Id.* The hearing is set for August 11, 2020 and the Trustee has opposed.

DEBTOR’S OPPOSITION

Debtor filed an Opposition on July 29, 2020. Dckt. 81. Debtor asserts that the default is due

in part, to being negatively impacted by the COVID-19 pandemic. *Id.* Debtor has filed a modified Plan, which proposes to add \$4,279.86 in post-petition arrears to Class 1 with a monthly dividend of \$85.60. *Id.* See Dckt. 55.

Debtor's Modified Plan and Motion to Confirm were set for 2:00 p.m. the same day as the instant motion for relief.

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$228,479.23 (Declaration, Dckt. 66), while the value of the Property is determined to be \$328,060, as stated in Schedules A/B and D filed by Debtor.

11 U.S.C. § 362(d)(1): Grant Relief for Cause

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because "cause" is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff'd sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests, for no particular reason, that the court grant relief from the Rule as adopted by the United States Supreme Court. With no grounds for such relief specified, the court will not grant additional relief merely stated in the prayer.

However, the court has continued the hearing, with the consent of the Movant. As such, the court will consider whether waiver of the fourteen days is proper, construing the grounds stated for relief as also being stated as the cause for waiving the stay of enforcement.

August 25, 2020 Hearing

At the continued hearing, the Parties agreed to continue the hearing in light of the Debtor's continuing efforts to confirm the proposed Modified Plan.

October 20, 2020 Hearing

Debtor has filed a Third Modified Plan which provides for curing the post-petition arrearage. Dckt. 96. According to Trustee, Debtor is current under the now confirmed Third Modified Plan. Dckt. 99. The Modified Plan was set to be heard on October 20, 2020 and has been confirmed.

The Plan providing for curing the arrearage and making the ongoing payments having been confirmed, the Motion is denied without prejudice.

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

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

The Motion for Relief from the Automatic Stay filed by U.S. Bank National Association, as Trustee for MASTR Asset Backed Securities Trust 2006-WMC3, Mortgage Pass-Through Certificates, Series 2006-WMC3(“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice.

Final Ruling: No appearance at the October 20, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 24, 2020. By the court's calculation, 57 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.

<p>The Motion to Confirm the Modified Plan is denied as moot.</p>
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11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Subsequent to the filing of this Motion, the debtor, Timothy Francis Schad ("Debtor") filed a Second Modified Plan and corresponding Motion to Confirm on October 12, 2020. Dckts 186, 182. Filing a new plan is a *de facto* withdrawal of the pending plan. The Motion to Confirm the Modified Plan is denied as moot, 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 Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Timothy Francis Schad ("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 as moot, and the proposed Chapter 13 Plan is not confirmed.

61. [19-25877](#)-E-13 **SHANITA JEFFERSON** **MOTION TO MODIFY PLAN**
[TLA-2](#) **Thomas Amberg** **9-1-20 [53]**

Final Ruling: No appearance at the October 20, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on September 1, 2020. By the court's calculation, 49 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. The debtor, Shanita Lorain Jefferson ("Debtor"), has filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response indicating non-opposition on October 14, 2020. Dckt. 69. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Shanita Lorain Jefferson ("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 September 1, 2020, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

62. [19-23778-E-13](#) **PATRICK MOORE** **MOTION TO MODIFY PLAN**
[MS-2](#) **Mark Shmorgan** **8-26-20 [44]**

Final Ruling: No appearance at the October 20, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on August 26, 2020. 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. The debtor, Patrick Moore ("Debtor"), has filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on October 2, 2020. Dckt. 55. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Patrick Moore (“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 August 26, 2020, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

Final Ruling: No appearance at the October 20, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 8, 2020. By the court's calculation, 73 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.

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Christian Edward Lazo ("Debtor"), has filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on October 6, 2020. Dckt. 36. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Christian Edward Lazo ("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 September 8, 2020, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

64.	<u>20-23783-E-13</u> <u>DPC-1</u> 64 thru 66	BRAD HAMILTON /CHERISE WILLIAMS John Downing	OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 9-21-20 <u>[29]</u>
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Final Ruling: No appearance at the October 20, 2020 hearing is required.

Local Rule 9014-1(f)(2) Objection—No Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtors, and Debtor's Attorney on September 21, 2020. By the court's calculation, 29 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the 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 -----
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<p>The Objection to Confirmation of Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.</p>
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11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Subsequent to the filing of this Objection, Debtor filed an Amended Plan and corresponding Motion to Confirm on October 18, 2020. Dckts. 50, 48. Filing a new plan is a de facto withdrawal of the pending plan. The Objection is sustained, and the plan is not confirmed.

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

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

The Objection to Confirmation the Chapter 13 Plan filed by the Chapter

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

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

65. <u>20-23783-E-13</u> BRAD HAMILTON/ CHERISE	WILLIAMS	OBJECTION TO CONFIRMATION OF
<u>ASW-1</u>	John Downing	PLAN BY RENO REAL ESTATE
		SOLUTIONS, LLC
		9-24-20 [42]

Final Ruling: No appearance at the October 20, 2020 hearing is required.

Local Rule 9014-1(f)(2) Objection—No Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor’s Attorney, and Chapter 13 Trustee on September 24, 2020. By the court’s calculation, 26 days’ notice was provided. 14 days’ notice is required.

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

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<p>The Objection to Confirmation of Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.</p>
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11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Subsequent to the filing of this Objection, Debtor filed an Amended Plan and corresponding Motion to Confirm on October 18, 2020. Dckts. 50, 48. Filing a new plan is a de facto withdrawal of the pending plan. The Objection is sustained, and the plan is not confirmed.

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

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

The Objection to Confirmation the Chapter 13 Plan filed by Reno Real Estate Solutions, LLC (“Creditor”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

66.	<u>20-23783-E-13</u> <u>CLH-1</u>	BRAD HAMILTON/ CHERISE WILLIAMS John Downing	OBJECTION TO CONFIRMATION OF PLAN BY RENO REAL ESTATE SOLUTIONS LLC 9-24-20 <u>[37]</u>
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Final Ruling: No appearance at the October 20, 2020 hearing is required.

Local Rule 9014-1(f)(2) Objection—No Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtors, Debtor’s Attorney, and Chapter 13 Trustee on September 24, 2020. By the court’s calculation, 26 days’ notice was provided. 14 days’ notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing -----
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<p>The Objection to Confirmation of Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.</p>
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11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Subsequent to the filing of this Objection, Debtor filed an Amended Plan and corresponding Motion to Confirm on October 18, 2020. Dckts. 50, 48. Filing a new plan is a de facto withdrawal of the pending plan. The Objection is sustained, and the plan is not confirmed.

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

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

The Objection to Confirmation the Chapter 13 Plan filed by Reno Real Estate Solutions, LLC (“Creditor”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

67. [20-23786-E-13](#) **ANDREW/REBECCA STANLEY** **OBJECTION TO CONFIRMATION OF**
[DPC-1](#) **Matthew DeCaminada** **PLAN BY DAVID P. CUSICK**
9-21-20 [16]

Final Ruling: No appearance at the October 20, 2020 hearing is required.

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 September 21, 2020. By the court's calculation, 29 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the 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

The Objection to Confirmation of Plan is sustained.

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

A. Debtor failed to appear at the Meeting of Creditors.

DISCUSSION

Trustee's objection is well-taken.

Failure to Appear at 341 Meeting

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 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).

Moreover, according to Trustee, Debtor's Counsel informed the hearing officer at the Meeting of Creditors that an Ex-Parte Application to Dismiss the Case would be filed. The Motion to Dismiss has been filed (Dckt. 20).

The Motion to Dismiss was filed on October 12, 2020. Dckt. 20.

Given Debtor's Motion to Dismiss and Debtor's failure to attend the Meeting of Creditors, the court finds that cause exists to sustain the objection, and the Plan is not confirmed.

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

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

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

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

Final Ruling: No appearance at the October 20, 2022 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 September 1, 2020. By the court’s calculation, 49 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 Solano First Federal Credit Union (“Creditor”) is granted, and Creditor’s secured claim is determined to have a value of \$13,707.00.

The Motion filed by Robert Nicholas Hicks (“Debtor”) to value the secured claim of Solano First Federal Credit Union (“Creditor”) is accompanied by Debtor’s declaration. Declaration, Dckt. 15. Debtor is the owner of a 2008 Chevy Silverado (“Vehicle”). Debtor seeks to value the Vehicle at a replacement value of \$13,707.00 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 does not oppose Debtor’s Motion. Dckt. 25.

DISCUSSION

The lien on the Vehicle’s title secures a purchase-money loan incurred on February 2016, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$54,362.93. Proof of Claim, No. 4. 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 \$13,707.00, 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 Robert Nicholas Hicks ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Solano First Federal Credit Union ("Creditor") secured by an asset described as 2008 Chevy Silverado ("Vehicle") is determined to be a secured claim in the amount of \$13,707.00, 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 \$13,707.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

69. <u>20-23799-E-13</u> <u>DPC-1</u>	ROBERT HICKS Matthew Gilbert	AMENDED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 9-16-20 <u>19</u>
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Final Ruling: No appearance at the October 20, 2020 hearing is required.

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 September 16, 2020. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

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

- A. Debtor’s Plan relies on a motion to value a secured claim not yet heard.

DISCUSSION

Trustee’s objections are well-taken.

Debtor’s Reliance on Motion to Value Secured Claim

A review of Debtor’s Plan shows that it relies on the court valuing the secured claim of Solano First Federal Credit Union. Trustee cannot recommend confirmation unless the motion is granted.

The Motion to Value the Secured Claim of Solano First Federal Credit Union was set for hearing on October 20, 2020. Debtor’s motion has been granted and at valued at the sought amount. Thus, this objection is resolved in favor of the Debtor.

The Objection is overruled, and the Plan is confirmed.

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

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

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

IT IS ORDERED that the Objection is overruled, and Robert Nicholas Hicks’s (“Debtor”) Chapter 13 Plan filed on August 4, 2020, is confirmed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.