

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

October 22, 2019 at 2:00 p.m.

1.	<u>19-24902</u> -C-13	TIMOTHY SIMMONS	OBJECTION TO CONFIRMATION
	<u>DPC-1</u>	Lucas B. Garcia	(ATTORNEYS' FEES)
			9-9-19 <u>[18]</u>

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 9, 2019. 14 days' notice is required. That requirement was met.

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

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

The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan as to Attorney fees only. The Trustee notes the following:

1. Debtor's Rights and Responsibilities form debtor's counsel is identified as Luke Garcia charging \$4,000.00 with \$260.00 paid before filing. Dckt. 4. Debtor's Attorney Disclosure of Compensation reflects the same and notes that the law firm is the "Law Office of Luke Garcia." Dckt. 1, pg

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2. Debtor's Statement of Financial Affairs, however, reflects that the law firm being "Law Office of Stephen Johnson." Dckt. 1, pg. 40.

The Trustee questions whether Debtor's Attorney fully disclosed a referral or fee splitting agreement and whether an additional attorney needs to file an Attorney Disclosure of Compensation.

DEBTOR'S RESPONSE

Debtor's attorney filed a response on October 9, 2019. Dckt. 23. Debtor's attorney states that the confusion is that he works for two law firm, but the same attorney is representing the Debtor. Due to a clerical error the incorrect law firm was listed on some of the filed Schedules. Debtor's attorney requests approval to correct the oversight.

DISCUSSION

At the hearing, the Trustee addresses whether Debtor's response has fully addressed the Trustee's Objection ----

~~—————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 Timothy Ryan Simmons's ("Debtor") Chapter 13 Plan filed on August 2, 2019, 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.~~

THRU #3

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 October 1, 2019. 14 days' notice is required. That requirement was met.

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

The Motion to Employ is granted.

Jayme Lewis Wood and Heather Lee Wood ("Debtors") seek to employ Ruben Dominguze ("Broker ") pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Debtors also seek retroactive approval for Broker's employment as the Motion to Sell is concurrently before the court for approval on October 22, 2019. Debtors seeks the employment of Broker to market and sell real property located at 2915 Quinter Way, Sacramento California.

Debtors argue that Broker's appointment and retention is necessary to obtain the best price for the property. Debtors disclose that Broker is related to Debtor Jayme Wood by marriage and state that Broker will not personally profit from the compensation. The stated commission of 2.25% will be solely for payment of buyer's broker.

Ruben Dominguze, a real estate agent of NextHome American Dream, testifies that he has already assisted the Debtors in finding a buyer for the property. Ruben Dominguze testifies he is related by marriage to Debtor Jayme Wood and in an effort remove any conflicts of interest has agreed to accept no

compensation personally for the transaction.

Pursuant to § 327(a), a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals, including attorneys, to represent or assist the trustee in carrying out the trustee's duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must not hold or represent an interest adverse to the estate and be a disinterested person.

Here, Counsel for Debtor and Mr. Dominguze, the professional to be hired have provided clear disclosure of the extended familial connection. The court infers that Mr. Dominguze is married to the sibling of one of the debtors from the description given.

With this disclosure, the confined scope of the professional services to be provided (marketing and sale), and the duties of Debtor's bankruptcy counsel to oversee such professional services, the waiver of compensation by Mr. Dominguze is not required. To the extent that he is doing so to assist the Debtor, such is commendable. If the Debtors, in what is now a surplus bankruptcy case, desire to amend their employment agreement to provide for compensation to their Broker, the court will consider such oral amendment at he hearing.

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

Taking into account all of the relevant factors in connection with the employment and compensation of Broker, considering the declaration demonstrating that Broker, does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Ruben Dominguze as Broker, for the Debtors on the terms and conditions set forth in the Residential Listing Agreement filed as Exhibit A, Dckt. 147. Approval of the commission is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

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

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

The Motion to Employ filed by Jayme Lewis Wood and Heather Lee Wood ("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 to Employ is granted, and Debtors is authorized to employ Ruben Dominguze as Broker, for the Debtors on the terms and conditions as set forth in the Residential Listing Agreement filed as Exhibit A, Dckt. 147.

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

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

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 October 1, 2019. By the court’s calculation, 21 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, -----

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The Motion to Sell Property is granted.
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The Bankruptcy Code permits Jayme Lewis Wood and Heather Lee Wood (“Debtors”), (“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 2915 Quinter Way, Sacramento , California (“Property”).

The proposed purchaser of the Property is Zhenfu Lou and the terms of the sale are:

- A. Purchase Price: \$390,000.00;
- B. Sold “as is” without the refrigerator; and
- C. Commission: 2.25% to be paid solely to buyer’s broker.

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 it will permit the Debtors to pay general unsecured creditors in full sooner than the current confirmed plan.

Movant has estimated that a 2.25% percent broker's commission from the sale of the Property will equal approximately \$8,775.00. 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 2.25% percent commission paid only to the buyer's broker due to the fact that Debtors' broker is related to one of the Debtors by marriage.

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 Jayme Lewis Wood and Heather Lee Wood ("Debtors"), ("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 Jayme Lewis Wood and Heather Lee Wood ("Debtors"), ("Movant"), is authorized to sell pursuant to 11 U.S.C. § 363(b) to Zhenfu Lou or nominee ("Buyer"), the Property commonly known as 2915 Quinter Way, Sacramento California ("Property"), on the following terms:

- A. The Property shall be sold to Buyer for \$390,000.0, on the terms and conditions set forth in the Purchase Agreement, Exhibit B, Dckt. 153, and as further provided in this Order.
- B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.
- C. The Chapter 13 Trustee is authorized to execute any and all documents reasonably necessary to effectuate the sale.
- D. The Chapter 13 Trustee is authorized to pay a real estate broker's commission in an amount not more than 2.25% percent of the actual purchase price upon consummation of the sale. The 2.25% percent commission shall be paid to the buyer's broker.
- 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.

THRU #5

Final Ruling: No appearance at the October 22, 2019 hearing is required.

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

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

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

The Objection to Discharge is sustained.

David Cusick, the Chapter 13 Trustee (“Objector”) objects to James Mejia’s (“Debtor”) discharge in this case. Objector argues that Debtor is not entitled to a discharge in the instant bankruptcy case because Debtor previously received a discharge in a Chapter 7 case.

Debtor filed a Chapter 7 bankruptcy case on September 19, 2017. Case No. 17-26225. Debtor received a discharge on June 11, 2018. Case No. 17-26225, Dckt. 69.

The instant case was filed under Chapter 13 on August 5, 2019.

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

Here, Debtor received a discharge under 11 U.S.C. § 727 on June 11, 2019, which is less than four years preceding the date of the filing of the instant case. Case No. 17-26225, Dckt. 69. Therefore,

pursuant to 11 U.S.C. § 1328(f)(1), Debtor is not eligible for a discharge in the instant case.

Therefore, the Objection is sustained. Upon successful completion of the instant case (Case No. 19-24909), the case shall be closed without the entry of a discharge, and Debtor shall receive no discharge in the instant case.

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

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

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

IT IS ORDERED that Objection to Discharge is sustained, and upon successful completion of the instant case, Case No. 19-24909, the case shall be closed without the entry of a discharge.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 9, 2019. 14 days' notice is required. That requirement was met.

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

The Objection to Confirmation of Plan is sustained.

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

- A. Debtor did not appear at the September 5, 2019 or September 26, 2019 Meeting of Creditors.
- B. Debtor's Schedule J does not appear consistent with the Amended Schedules A/B and D filed on September 3, 2019. Specifically, Schedule J does not reflect debt to Americredit related to a 2017 Dodge Caravan.

DISCUSSION

Trustee's objections are well-taken.

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).

Trustee alleges that the Plan is not feasible. 11 U.S.C. § 1325(a)(6). The Debtor's Schedule J does not appear to reflect all obligations of Debtor pre the most recently filed Amended Schedules. 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.

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 29, 2019. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1). That requirement was met.

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

The Motion to Confirm the Amended Plan is denied.

The debtor, Ignacio Lopez (“Debtor”), seeks confirmation of the Amended Plan. Amended Plan, Dckt. 51. 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 September 13, 2019. Dckt. 55. The Trustee notes that the Plan does not provide for Secured Creditor U.S. Bank National, N.A.’s claim in full. The Trustee flags for the court that this was the basis for the court sustaining Secured Creditors Objection on June 11, 2019. Civil Minutes, Dckt. 27.

DISCUSSION

As stated in the court’s ruling on June 11, 2019, Debtor’s Plan must provide for the secured creditor’s claim and the Plan does not provide for the full payment of arrearages. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B).

It appears that Amended Plan and Motion to Confirm were filed as a canard to improperly deflect the Chapter 13 Trustee in prosecution of a then pending Motion to Dismiss. The court cannot identify any

good faith basis for merely refileing a defective plan that does not comply with the Bankruptcy Code and then state in the Motion (subject to the Fed. R. Bankr. P. 9011 certifications) that such Plan “complies” with the Bankruptcy Code. The objection to this Plan was sustained and confirmation denied. Orders, Dckts. 28, 29. Denial of the confirmation of the defective plan was not “without prejudice,” and Debtor and Debtor’s counsel had no basis for attempting to re-litigate such final denial of that defective Plan.

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, Ignacio Lopez (“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 Debtor (*pro se*), Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on September 5, 2019. 28 days' notice is required. That requirement was met.

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

The Motion to Value Secured Claim of Ally Financial ("Creditor") is granted and Creditor's secured claim is determined to have a value of \$6,515.00.

The Motion filed by Lorenzo Naranjo ("Debtor") to value the secured claim of Ally Financial ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 43. Debtor is the owner of a 2014 Chevrolet Volt ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$4,230.00 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).

In the Declaration in support of the Motion Debtor does not provide information about the condition of this six model year old vehicle.

SECURED CREDITOR'S OPPOSITION

On September 16, 2019, Creditor filed an Opposition asserting that the value of the Vehicle should be determined to be \$7,265.00. Dckt. 55. In support of Creditor's position Creditor submits the declaration of Allison E. Graves, stating that she ran a NADA report for the Vehicle. Dckt. 56. Additionally, Creditor notes that the Kelly Blue Book valuation included in Debtor's Motion reflects the trade in value not the retail value. Dckt. 44, Debtor's Exhibit 4.

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on July 4, 2014, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$11,633.13. Proof of Claim, No. 5-2. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized.

It appears that Debtor's opinion of value is influenced by (or based on) the Kelly Blue Book "Trade In" value, a copy of which has been provided as an Exhibit. Dckt. 44 at 17-18. The value for purposes of an 11 U.S.C. § 506(a) valuation for a consumer, personal use vehicle is the retail sale value, as adjusted for the condition of the vehicle. 11 U.S.C. § 506(a)(2).

The NADA report, also a recognized trade journal used in the automobile sale industry states that the showroom ready, "Clean Retail" value is \$7,265. This includes the adjustments for there being 145,804 miles on this vehicle. Exhibit C, Dckt. 57. The cash sales price for this vehicle was \$32,782. Exhibit B, Purchase Contract, Dckt. 42 at 23.

Given the mileage and that Debtor has been driven to this Chapter 13 bankruptcy to try and cure (\$58,884.54) in pre-petition arrearages on the mortgage secured by their home, after having recently received in May 2019 their Chapter 7 discharge, the court infers that Debtor has not been attentive to the maintenance and care of this high mileage vehicle. Obviously there needs to be some repair and maintenance necessary to get this used vehicle to "Clean Retail" showroom floor sale value.

The court adjusts the Clean Retail value by (\$750) for reasonable costs and expenses to get this vehicle to that condition. The value of the Vehicle is \$6515.00.

Creditor's secured claim is determined to be in the amount of \$6,515.00, 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 Lorenzo Naranjo("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Ally Financial ("Creditor") secured by an asset described as 2014 Chevrolet Volt ("Vehicle") is determined to be a secured claim in the amount of \$6,515.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$6,515.00 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 September 17, 2019. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1). That requirement was met.

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

The Motion to Confirm the Amended Plan is denied.

The debtor, Laura Batement (“Debtor”), seeks confirmation of the Amended Plan. Amended Plan, Dckt. 23. 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 September 13, 2019. Dckt. 55. The Trustee notes that the Plan does not provide for Secured Creditor U.S. Bank National, N.A.’s claim in full. The Trustee flags for the court that this was the basis for the court sustaining Secured Creditors Objection on June 11, 2019. Dckt. 27, Civil Minutes.

DISCUSSION

As stated in the court’s ruling on June 11, 2019, Debtor’s Plan must provide for the secured creditor’s claim and the Plan does not provide for the full payment of arrearages. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B).

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, Ignacio Lopez (“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.

Insufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on September 23, 2019. The Proof of Service does not reflect the address for Creditor, California Franchise Tax Board, is not consistent with address provided for per Form EDC 2-785, Roster of Government Agencies.

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 California Franchise Tax Board ("Creditor") is **xxxxx, and Creditor's secured claim is determined to have a value of **\$xxxx.xx**.**

The Motion to Value filed by Eduardo Monterrosa ("Debtor") to value the secured claim of California Franchise Tax Board ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 36. Debtor is the owner of the subject real property commonly known as 167 Bayside Terrace, Vallejo, California ("Property"). Debtor seeks to value the Property at a fair market value of \$395,000.00 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.

TRUSTEE RESPONSE

The Trustee filed a Response on October 8, 2019 noting that the California Franchise Tax Board was not served at the address provided for by the Court's agency roster for government agencies. Dckt. 44.

DISCUSSION

~~The senior in priority first deed of trust secures a claim with a balance of approximately \$400,238.33. Proof of Claim No. 1-1. Creditor's state tax lien secures a claim with a balance of approximately \$133,240.00. Dckt. 1, Schedule D. Therefore, Creditor's claim secured by a junior secured claim 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 Eduardo Monterrosa ("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 California Franchise Tax Board ("Creditor") secured by a state tax lien recorded against the real property commonly known as 167 Bayside Terrace, Vallejo, 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 \$395,000.00 and is encumbered by a senior lien securing a claim in the amount of \$400,238.33, which exceeds the value of the Property that is subject to Creditor's lien.~~

THRU #11

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, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on September 17, 2019. 28 days' notice is required. That requirement was met.

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

The Motion to Value Collateral and Secured Claim of Wells Fargo Dealer Services ("Creditor") is denied.

The Motion filed by Tammy Potter-Goddard and Betty Potter-Goddard ("Debtors") to value the secured claim of Wells Fargo Dealer Services ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 49. Debtor is the owner of a 2015 KIA Soul ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$10,747.00 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).

SECURED CREDITOR OPPOSITION

Secured Creditor filed an Opposition stating that the debt was incurred on December 19, 2016 which was 688 days prior to the bankruptcy. Accordingly, Secured Creditor asserts that the asset is not subject to valuation under 11 U.S.C. § 506.

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on December 19, 2016,

which is less than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$13,173.09. Therefore, Creditor's claim is not subject to a 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 Tammy Potter-Goddard and Betty Potter-Goddard ("Debtors")("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is denied.

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

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, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on September 17, 2019. 28 days’ notice is required. That requirement was met.

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

The Motion to Value the Secured Claim of Synchrony/ Ashley Furniture (“Creditor”) is granted and determined to have a value of \$0.00.

The Motion filed by Tammy Potter-Goddard and Betty Potter-Goddard (“Debtors”) to value the secured claim of Synchrony/Ashley Furniture (“Creditor”) is accompanied by Debtor’s declaration. Declaration, Dckt. 54. Debtor is the owner of property defined by Debtors as a couch (“Property”). Debtor seeks to value the Property at a replacement value of \$200.00 as of the petition filing date. As the owner, Debtor’s opinion of value is evidence of the asset’s value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

TRUSTEE’S RESPONSE

The Chapter 13 Trustee filed a response questioning whether the asset described in the Motion is associated with a secured claim. The Trustee notes that there are four claims filed by Synchrony Bank, Claim No. 16-1 appears to be the only claim related to Ashely Home Stores for \$997.13. The claim, however, is not filed as secured.

DISCUSSION

The court has reviewed the multiple proofs of claim filed for Synchrony Bank and none of them include any of the underlying contractual documents. While it is common for retail furniture financing to include a purchase money security interest the court cannot tell because the creditor has not provided the contracts with the proofs of claim.

It may well be that the Creditor has realized that its collateral, the used family couch has no value as collateral. Getting possession, cleaning it, and the costs of selling would likely exceed any value of a sale. So, Creditor “admits” that its claim is unsecured.

The court finds Creditor’s statement in the multiple Proofs of Claim that its claims are unsecured to be persuasive in concluding that the value of the couch is \$0.00. The proofs of claim are prima facie evidence of the claims. While not determinative of value of the collateral, it does provide the court with some evidence in the form of an admission.

Therefore, the secured claim of Creditor is determined to be \$0.00.

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 Tammy Potter-Goddard and Betty Potter-Goddard (“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 secured claim of Synchrony/Ashley Furniture (the creditor named in the Motion) for which the collateral is described as a “couch” 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 couch is \$0.00.

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 26, 2019. 28 days' notice is required. That requirement was met.

The Motion to Vacate 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 Vacate is denied.

Mateo Galvan and Eva Galvan ("Debtors") filed the instant case on May 24, 2019. Dckt. 1. A plan was not confirmed in this case.

On July 23, 2019, the Chapter 13 Trustee, David Cusick ("Trustee"), filed a Motion to Dismiss the Case due to Debtors delinquency and failing to attend the Meeting of Creditors. Dckt. 32. On September 25, 2019, after a continuance, a hearing on the Motion to Dismiss was held, and the Motion was granted. Dckt. 62.

On October 2, 2019, Debtor filed this instant Motion to Vacate, claiming that Debtor's counsel inadvertently missed the hearing on September 25, 2019.

The court construes Debtor's Motion as seeking to have the order dismissing the case vacated, per Federal Rule of Civil Procedure 60(b).

Grounds Stated in Motion

The grounds stated with particularity in the Motion (Fed. R. Bankr. P. 9013) are summarized by the court as follows:

- A. Debtor's attorney reviewed his calendar (on an unstated date) and saw that on the calendar there was a hearing on a motion to dismiss this case on September 25, 2019.

Then, he went to check the pre-hearing dispositions at 11:30 a.m. (presumably on September 25, 2019), well after the court's 9:30 a.m. calendar was concluded. Motion ¶ 3, Dckt. 54.

- B. Due to a mistake, Debtor's attorney failed to appear at the hearing, and this resulted in the case being dismissed. Motion *Id.* ¶¶ 4,5.
- C. Federal Rule of Civil Procedure 60 and Federal Rule of Bankruptcy Procedure 9024 exist for such mistakes. *Id.* ¶ 5.

No other grounds are asserted. No points and authorities are provided and Debtor makes no analysis of when relief for a mistake is permissible pursuant to Federal Rule of Civil Procedure 60(b).

Review of Declaration

In his declaration counsel testifies that for some reason he thought that the hearing on the Motion to Dismiss was set for hearing at 1:00 p.m. Counsel testifies that he recently had a series of hearings before a different judge, with those being set at 1:00 p.m. and theorizes that such may have cause some confusion for counsel. Dckt. 56. This led to counsel's mistake of when he thought the hearing was being conducted.

OPPOSITION OF CHAPTER 13 TRUSTEE

The Trustee states that Debtors were delinquent under the original plan and under the proposed amended plan in the amount of \$7,120.00 as of the date of the dismissal. Moreover, the proposed amended plan is objectionable due to the delinquency, not providing tax returns, improper treatment of a lease, and an opposition to Debtor's Attorney's "no look fee." The Trustee notes that Debtors did not comply with the auditors due to a non-response, another basis to dismiss the case. Dckt. 31. Additionally, the Trustee notes that there have been multiple delays in the case caused by purported confusion over dates and times, including missing the First Meeting of Creditors.

OPPOSITION OF CREDITOR ENGS COMMERCIAL FINANCE CO.

Creditor filed an Opposition asserting that Debtors are serial filers, noting this is Debtors third Chapter 13 in last 16 months. Case Nos. 18-23256; 18-26713; and 19-23327. Creditor questions the last minute request to allow the case to continue and asserts that the court had good cause to dismiss the case on September 25, 2019.

APPLICABLE LAW

Federal Rule of Civil Procedure Rule 60(b), as made applicable by Federal Rule of Bankruptcy Procedure 9024, governs the reconsideration of a judgment or order. Grounds for relief from a final judgment, order, or other proceeding are limited to:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);

- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

FED. R. CIV. P. 60(b). A Rule 60(b) motion may not be used as a substitute for a timely appeal. *Latham v. Wells Fargo Bank, N.A.*, 987 F.2d 1199, 1203 (5th Cir. 1993). The court uses equitable principles when applying Rule 60(b). *See* 11 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 2857 (3d ed. 1998). The so-called catch-all provision, Federal Rule of Civil Procedure 60(b)(6), is “a grand reservoir of equitable power to do justice in a particular case.” *Uni-Rty Corp. V. Guangdong Bldg., Inc.*, 571 F. App’x 62, 65 (2d Cir. 2014) (citation omitted). While the other enumerated provisions of Rule 60(b) and Rule 60(b)(6) are mutually exclusive, relief under Rule 60(b)(6) may be granted in extraordinary circumstances. *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 863 & n.11 (1988).

A condition of granting relief under Rule 60(b) is that the requesting party show that there is a meritorious claim or defense. This does not require a showing that the moving party will or is likely to prevail in the underlying action. Rather, the party seeking the relief must allege enough facts that, if taken as true, allow the court to determine if it appears that such defense or claim could be meritorious. 12 JAMES WM. MOORE ET AL., MOORE’S FEDERAL PRACTICE ¶¶ 60.24[1]–[2] (3d ed. 2010); *see also Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984).

Additionally, when reviewing a motion under Rule 60(b), courts consider three factors: “(1) whether the plaintiff will be prejudiced, (2) whether the defendant has a meritorious defense, and (3) whether culpable conduct of the defendant led to the default.” *Falk*, 739 F.2d at 463 (citations omitted).

DISCUSSION

The court recognizes that human beings are involved in the judicial process and that human beings (even judges, just look at appeals) make mistakes. The fact that a mistake occurred is not damning.

However, in dealing with mistakes, the Supreme Court, as amplified in case law, has added the consideration of showing a likelihood of success before unwinding a decision because there was a “mistake.” Cases and actions are not yo-yo’ed back and forth merely because a “mistake” occurred. The court looks to the substance as to how the party has been and is prosecuting the action.

As this court has previously discussed in other cases (not involving Debtor’s counsel, for whom this “mistake” is an aberration) As an initial policy matter, the finality of judgments is an important legal and social interest. The standard for determining whether a Rule 60(b)(1) motion is filed within a reasonable time is a case-by-case analysis. The analysis considers “the interest in finality, the reason for delay, the practical ability of the litigant to learn earlier of the grounds relied upon, and prejudice to other parties.” *Gravatt v. Paul Revere Life Ins. Co.*, 101 F. App’x 194, 196 (9th Cir. 2004) (citations omitted); *Sallie Mae Servicing, LP v. Williams (In re Williams)*, 287 B.R. 787, 793 (B.A.P. 9th Cir. 2002) (citation

omitted).

As noted by the Chapter 13 Trustee, Debtor was seriously in default in the Chapter 13 Plan payments. The Plan was objected to on substantive grounds. Debtors had failed to provide documents and professed “confusion” over making their plan payments.

This is not the first or second recent bankruptcy filing by Debtor. As noted by Creditor, this is Debtor’s third recent bankruptcy case. The two prior cases are summarized by the court as follows:

- A. 18-26715 - Chapter 13 Case - Represented by Same Counsel as in this Case.
 - 1. Filed.....October 25, 2018
 - 2. Dismissed.....April 23, 2019
 - 3. Dismissed due to Debtor failing to file an amended plan and motion to confirm within the ninety (90) day deadline after the court denied confirmation of the prior plan filed by Debtor. 18-26715; Motion and Order, Dckts. 33, 34.
 - 4. The Trustee’s Final Report in Case 18-26715 states that Debtor paid \$6,650 into the plan during the five months of that case. *Id.*, Dckt. 37. Of that, no monies were paid for Debtor’s current or arrearage mortgage payments, with \$6,118.01 being paid on Debtor’s secured vehicle debts.
 - 5. The Plan filed by the Debtor in Case 18-26715 required monthly plan payments of \$3,325.00. *Id.*, Dckt. 2. For the five months of the plan payment months prior to dismissal, this required the Debtor to fund the plan with \$16,625. Debtor paid less than half that amount, with there being slightly less than \$10,000 of disposable income in the prior case unaccounted for.
- B. 18-23256 - Chapter 13 Case -Represented by the Same Counsel as in this Case.
 - 1. Filed.....May 23, 2018
 - 2. Dismissed.....September 6, 2018
 - 3. Case 18-23256 was dismissed due to Debtor’s default in plan payments. 18-23256; Civil Minutes, Dckt. 27. The monthly plan payment was \$2,930. The Motion to Dismiss was filed on July 2, 2018, with the asserted default being for the first month, June 2018, that a plan payment was due.
 - 4. The Chapter 13 Trustee reports that Debtor paid \$0.00 during the three plan payments months of Case 18-23256. *Id.*, Dckt. 31.

In the current bankruptcy case, the Chapter 13 Trustee filed the Motion to Dismiss on July 23, 2019. Dckt. 32. The grounds stated in the Motion include:

- A. Debtor made only \$3,000 in plan payments, with that received on June 27, 2019.

Motion ¶ 1, Dckt. 32. The Chapter 13 Plan filed by Debtor required monthly plan payments of \$7,395.67, with the first payment due in June 2019. Plan, Dckt. 2. Thus, with the first month of the Plan, Debtor was in default \$4,395.76 in plan payments.

- B. Debtor failed to appear at the First Meeting of Creditors. Motion ¶ 2, Dckt. 32. The docket reflects that Debtor and counsel did attend the Continued First Meeting of Creditors on August 9, 2019.

Debtor filed an Opposition to the Motion to Dismiss. Counsel for Debtor clearly laid out the opposition of the Debtor, which is summarized by the court as follows:

- A. As of the August 15, 2019 filing of the Opposition, Debtor made a partial cure payment and are “closer” to bringing the default in payments current. Opposition ¶ 1, Dckt. 40.
- B. Debtor’s failure to appear at the First Meeting of Creditors was “technical,” and they appeared at the continued hearing with the basic identification documents required for such meeting. *Id.*, ¶ 2.

The Opposition to the Motion to Dismiss was supported by the Declaration of Debtor’s Counsel. Dckt. 41. He testifies as to what occurred at the original First Meeting of Creditors.

The August 21, 2019 hearing on the Motion to Dismiss was continued to allow Debtor and Counsel to continue in their efforts to rectify the situation. Civil Minutes, Dckt. 45.

This court does not grant relief merely because an opposition was not filed or an attorney did not appear at oral argument. Even when the default of a party is entered (which did not occur for Debtor on the Motion to Dismiss), the court carefully reviews the law and evidence presented to issue orders and judgments as provided by the law. *See United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 130 S. Ct. 1367, 1381 n.14, 176 L. Ed. 2d 158, 173 n.14 (2010); *see also Varela v. Dynamic Brokers, Inc. (In re Dynamic Brokers, Inc.)*, 293 B.R. 489, 499 (B.A.P. 9th Cir. 2003) (citing *Everett v. Perez (In re Perez)*, 30 F.3d 1209, 1213 (9th Cir. 1994)).

The Debtor did not provide any further evidence for the September 25, 2019 continued hearing. While counsel could have appeared, he could not introduce evidence at that hearing.

Though the court could see that the First Meeting had been conducted, there was still the problem that the Debtor was in default in plan payments. If the Debtor had been current, the Trustee would have dismissed his Motion, much preferring to have a performing plan rather than a dismissed case.

The Trustee reports in his Opposition to the present Motion, the Debtor was delinquent \$8,187.01 under the terms of the original plan and \$7,120.00 under the terms of the amended plan filed by the Debtor. Opposition and Declaration, Dckts. 58, 59.

The Trustee also notes that the Amended Plan filed by Debtor was not one that the court could conclude that Debtor had a likelihood of success on the merits. The asserted deficiencies are the same ones that were the basis for objection to the original plan. The Trustee also points to other failures of the Debtor to timely file documents and provide explanation for such.

The court notes that Debtor's declaration filed in support of the Motion to Confirm provides a rosy future financial picture of trucking contracts for decades and more than enough money to fund a plan that provides a 0.00% dividend for creditors holding general unsecured claims. 49. Looking at the amended/supplemental Schedules I and J (which simultaneously date back to the May 2019 filing of this case but are only accurate from September 2019 going forward), Debtor testifies having \$17,300 a month in income. Dckt. 52 at 5-6.

Being self-employed, on Amended/Supplemental Schedule J Debtor provides for a monthly expense of \$2,500 for payment of quarterly income taxes on his \$16,000.00 a month net self-employment income. On \$192,000 of net, taxable income, Debtor sets aside \$30,000 (15%) annually.

Debtor also sets aside \$2,700 a month for self-employment taxes, which would be \$32,400 annually. The IRS website states that federal self-employment taxes are computed at 15.3% of the first \$132,900 in income and then 2.9% above that amount. On \$192,000 in taxable income from his self-employment, that would be approximately \$18,192. It is unclear where the additional \$14,000 in monies would be paid.

Debtor reports a family unit of six persons, the two adult debtors, to 'adult' children and two pre-teen children. *Id.* at 7. Excluding any expenses for mortgage, property taxes, and homeowners insurance, after deducting out the \$5,200 a month for taxes, Debtor shows (\$4,774) for household expenses.

It appears that Debtor might have, based upon the most recent set of changes, some possible chance of performing a plan. But it is not presented to the court how such is reasonably likely to occur, what has changed, and where all of the monies from the defaulted plan payments over the past sixteen months (May 23, 2018 filing of first Chapter 13 case through September 2019 dismissal of third Chapter 13 case.

Such issues can be more properly addressed with the filing of a fourth Chapter 13 case, one in which Debtor will seek to have the automatic stay imposed pursuant to 11 U.S.C. § 362(c)(4)(B). As outlined above, Debtor's first Chapter 13 case was dismissed on September 6, 2018. Debtor's second Chapter 13 case was dismissed on April 23, 2019. The current bankruptcy case was filed on May 24, 2019. Therefore, within the one year period preceding the May 24, 2019 commencement of this case there were two prior cases that had been pending and dismissed. See 11 U.S.C. § 362(c)(4)(A). A review of the Docket in this current case does not disclose a motion seeking to impose the automatic stay in this case or any order so providing. See 11 U.S.C. § 362(c)(4)(B).

Presumably, if Debtor has such income and could make such payments on Creditor's claim, it is likely Creditor would work arm in arm with Debtor for such a plan. Additionally, based on the financial information from the prior cases, there should be some "extra" monies that were not used to fund the prior plans.

The "mistake" of counsel in not attending the September 25, 2019 hearing is not the reason for the dismissal. Debtor has not provided the court with sufficient grounds to vacate the order dismissing the case. Further, whether in this case or a fourth bankruptcy case, Debtor will need to seek relief pursuant to 11 U.S.C. § 362(c)(4)(B).

The Motion is denied.

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

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

The Motion to Vacate filed by Mateo Galvan and Eva Galvan (“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 denied.

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

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 16, 2019. 28 days' notice is required. That requirement was met.

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

The Objection to Claimed Exemptions is xxxx.

David Cusick ("the Chapter 13 Trustee") objects to Allen Gamble's ("Debtor") use of the California exemptions without the filing of the spousal waiver required by California Code of Civil Procedure § 703.140. California Code of Civil Procedure § 703.140(a)(2), provides:

If the petition is filed individually, and not jointly, for a spouse, the exemptions provided by this chapter other than the provisions of subdivision (b) are applicable, except that, if **both** of the spouses effectively waive in writing the right to claim, during the period the case commenced by filing the petition is pending, the exemptions provided by the applicable exemption provisions of this chapter, other than subdivision (b), in any case commenced by filing a petition for either of them under Title 11 of the United States Code, then they may elect to instead utilize the applicable exemptions set forth in subdivision (b).

(emphasis added). The court's review of the docket reveals that the spousal waiver was filed after the Trustee's Objection was filed. Dckt. 76.

The Trustee also Objected noting that the Schedules appear to indicate two different law suits and objects to the exemptions because the asset is not clearly identified.

DEBTOR'S RESPONSE

Debtor filed a Response on October 8, 2019. Dckt. 74. Debtor states that the spousal waiver and clarification that there is only one lawsuit will be filed prior to the hearing.

At the hearing-----

The Trustee's Objection is **xxxx**.

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

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

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

IT IS ORDERED that Objection is **xxxx**.

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

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 October 7, 2019. 14 days' notice is required. That requirement was met.

The Motion to Impose the Automatic Stay 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 Impose the Automatic Stay is granted.

Timothy Janovich ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) imposed in this case. 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. 19-25290 and 18-23571) were dismissed on July 9, 2019, and September 3, 2019, respectively. *See* Order, Bankr. E.D. Cal. No. 18-23571, Dckt. 85; Order, Bankr. E.D. Cal. No. 19-25290, Dckt. 9. Therefore, pursuant to 11 U.S.C. § 362(c)(4)(A)(I), the provisions of the automatic stay did not go into effect upon Debtor filing the instant case.

Here, Debtor states that the instant case was filed in good faith and explains that the previous earlier of two previous cases was voluntarily dismissed and the prior case was dismissed for failure to file documents. The most recent case filed *pro se* and the court notes that Debtor is represented in the present case.

APPLICABLE LAW

When stay has not gone into effect pursuant to 11 U.S.C. § 362(c)(4), a party in interest may

request within 30 days of filing that the stay take effect as to any or all creditors (subject to such conditions or limitations as the court may impose), after notice and a hearing, only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed. 11 U.S.C. § 362(c)(4)(B).

For purposes of subparagraph (B), a case is presumptively filed not in good faith as to all creditors if:

(I) 2 or more previous cases under this title in which the individual was a debtor were pending within the 1-year period;

(II) a previous case under this title in which the individual was a debtor was dismissed within the time period stated in this paragraph after the debtor failed to file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney), failed to provide adequate protection as ordered by the court, or failed to perform the terms of a plan confirmed by the court; or

(III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under this title, or any other reason to conclude that the later case will not be concluded, if a case under chapter 7, with a discharge, and if a case under chapter 11 or 13, with a confirmed plan that will be fully performed; . . .

11 U.S.C. § 362(c)(4)(D).

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

- A. Why was the previous plan filed?
- B. What has changed so that the present plan is likely to succeed?

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

DISCUSSION

Debtor's prior cases were dismissed after Debtor voluntarily dismissed the case (No. 18-23571) and after Debtor, *pro se*, did not file required documents (No. 19-25290).

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

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

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

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

The Motion to Impose the Automatic Stay filed by Timothy Janovich (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and the automatic stay is imposed pursuant to 11 U.S.C. § 362(c)(4)(B) for all purposes and parties, unless terminated by operation of law or further order of this 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—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 9, 2019. By the court's calculation, 43 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 Regional Acceptance Corporation ("Creditor") is granted, and Creditor's secured claim is determined to have a value of \$XXXX.XX.

The Motion filed by Felicia Yvette Jackson ("Debtor") to value the secured claim of Regional Acceptance Corporation ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 10. Debtor is the owner of a 2017 Hyundai Elantra ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$16,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Debtor testifies that it is her opinion the vehicle has a value of \$16,000. She may so testify. Then he provides additional testimony, stating under penalty of perjury that the vehicle is "in average condition for its age and does not have any extraordinary options." Declaration ¶ 6, Dckt. 10. While the Debtor may know that she did not purchase any "extra options" and the car is "ordinary," she has not provided any testimony as to her extensive knowledge of the auto resale industry, her automotive condition and repair expertise, and how she can opine that the Vehicle is of "average condition."

If the Debtor had stopped with giving her owner's opinion and provided factual testimony as to the condition of the Vehicle (such as throw up stains on the back seat, worn tires need replacement, cracked windshield), the court could find it credible. However, the expert opinion of "average condition" and not communicating any information about the actual condition indicates that this is a "Yeah, I don't need to read, but attorney, if you wrote it and tell if I sign whatever you put in here I WIN, then I'll sign it" non-personal knowledge declaration.

Creditor's Proof of Claim

Creditor filed Proof of Claim, No. 1, on September 18, 2019. The Claim is stated to be secured in the amount of \$31,128.93. However, no value is stated for the Vehicle.

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred in December 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 \$31,128.93. Proof of Claim, No. 1.

Creditor offers no opposition to the Motion. However, the court does not find Debtor's testimony credible. Debtor appears unable to articulate any facts as to the condition of the vehicle. Debtor has not provided the court with any testimony to establish that she has expert or specialized knowledge of the auto industry and what constitutes "average condition" of the Vehicle.

The court denies the Motion without prejudice. Debtor and counsel can come back with Debtor providing personal knowledge testimony.

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 Felicia Yvette Jackson ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice.

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

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 12, 2019. By the court's calculation, 40 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 granted.</p>

The debtor, Haeja Koh ("Debtor") seeks confirmation of the Modified Plan which provides for \$28,600.00 p/a of August 2019, and for payments of \$1,782.00 thereafter. 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 October 8, 2019. Dckt. 57. Trustee argues the plan is not Debtor's best efforts because Schedules show an ability to pay \$2,200—which is greater than the plan payment of \$1,782.00. Trustee argues further that Debtor is proposing to pay \$6,340.91 in taxes through the plan where no claim has been filed and court approval has not been sought.

DISCUSSION

The Modified Plan here proposes to pay 100 percent of unsecured claims, which total \$73,842.65. Dckt. 55. While the Trustee argues against reducing the monthly payment and including certain tax claims (for which no proof of claim is filed), the Modified Plan appears to comply 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, Haeja Koh (“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 12, 2019, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on September 9, 2019. By the court's calculation, 43 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the 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. The debtors, Bijay Singh and Leticia Lisa Singh ("Debtor") state on Schedule I that Debtor Bijay is disabled and not working, but Debtor admitted at the Meeting of Creditors that Debtor Bijay has recommenced working.
- B. Debtor has \$261,302.00 in non-exempt equity, but the plan only proposes a 10 percent dividend.

DISCUSSION

As discussed by the Trustee, the Debtor's Schedules are not accurate because they indicated Debtor Bijay is disabled and unemployed where he has recommenced work. This suggests the plan may

become infeasible, or that it is not Debtor's best efforts. 11 U.S.C. §§ 1322(b), 1325(a)(6).

While Debtor had \$261,302.00 in non-exempt equity, Debtor subsequently filed Amended Schedule C to exempt Debtor's retirement plans. Dckt. 20.

Because the Debtor's work situation is currently unknown, the plan is not confirmable.

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, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on September 17, 2019. 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 -----
-----.

The Objection to Confirmation of Plan is sustained.

JPMorgan Chase Bank, National Association ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that its prepetition arrearages are in the amount of \$19,85.71, while the plan provides for only \$15,000.00. Creditor argues that failure to provide the full amount means the plan does not provide for its claim, does not promptly cure arrearages, and is not feasible.

Creditor' argument is well-taken. Proof of Claim, No. 6, filed by Creditor presents prima facie evidence that the amount of arrearages are \$19,85.7. The Plan does not propose to cure those arrearages. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. See 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearages.

Additionally, because the plan currently does not account for the larger claim, it currently is not feasible. 11 U.S.C. § 1325(a)(6).

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

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

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

The Objection to the Chapter 13 Plan filed by JPMorgan Chase Bank, National Association (“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.

THRU #20

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 18, 2019. 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 -----

-----.

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

DISCUSSION

The Trustee opposes confirmation on the grounds that a Motion To Value secured claim is pending, and that another payment will come due.

A review of the docket shows the court has granted Debtor's Motion to Value. Furthermore, Debtor is current in plan payments.

The Plan does comply 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 James Brian Mac Millan and Barbara Jean Mac Millan’s (“Debtor”) Chapter 13 Plan filed on August 6, 2019, is confirmed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Final Ruling: No appearance at the October 22, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on August 30, 2019. By the court's calculation, 53 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 One Main Financial ("Creditor") is granted, and Creditor's secured claim is determined to have a value of \$11,956.00.

The Motion filed by James Brian Mac Millan and Barbara Jean Mac Millan ("Debtor") to value the secured claim of f One Main Financial ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 17. Debtor is the owner of a 2012 Ford F-150 ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$11,956.00 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).

Creditor's Proof of Claim

Creditor filed Proof of Claim, No. 5, on August 31, 2019. The Claim state the value of the Vehicle is \$18,183.00 as of the date of filing, and that the Creditor's claim is secured in the amount of \$18,182.75 and unsecured in the amount of \$0.25.

DISCUSSION

Debtor, as the owner of the vehicle, states Debtor's opinion as to value, concluding that it is \$11,956.00. Declaration, Dckt. 17. As the owner, the 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). While Debtor could have made more of an effort in her testimony to describe the condition of the vehicle, any deferred maintenance, damage, required clean-up, such lack of attention to her testimony does not render it irrelevant or not probative. It is akin to Creditor not bothering to include a KBB or NADA authenticated valuation with the Proof of Claim, which would enhance the probative value to be overcome.

The lien on the Vehicle's title secures a purchase-money loan incurred on October 2015, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$18,182.75. Proof of Claim, No. 5. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of \$11,956.00, 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 James Brian Mac Millan and Barbara Jean Mac Millan ("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 f One Main Financial ("Creditor") secured by an asset described as 2012 Ford F-150 ("Vehicle") is determined to be a secured claim in the amount of \$11,956.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$11,956.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

THRU #22

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

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 Debtors, Debtors' Attorney, and Office of the United States Trustee on June 18, 2019. 28 days' notice is required. That requirement was met.

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 granted, and the case is dismissed.

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. the debtors are delinquent \$10,400.00 in plan payments and another payment of \$3,600.00 will come due prior to the hearing. Debtors have paid \$4,200.00 into the plan.
2. Debtors do not have a plan pending since the court sustained the Trustee's Objection to Confirmation held on April 30, 2019. Dckt. 27.

DEBTOR'S RESPONSE

Debtors' filed a response, and declaration in support, on August 7, 2019 noting that debtor will file, serve, and be current under an amended plan by the hearing. Dckts. 32 and 33.

TRUSTEE STATUS REPORT:

The Trustee reports that Debtors have cured the delinquency but the Non-standard provisions of the Amended Plan filed on September 9, 2019 (Dckt. 40) calls for payments of \$4,200.00 to be paid through month 7 then \$1,600.00 for 53 months.

At the hearing the Trustee reported that the only issue is that Debtor made the last payment in

May 2019. Debtor's counsel will address the reasons for the defaults and whether the Debtor's mother can compensate the Debtors for these expenses and lost plan payments in connection with the confirmation hearing.

DISCUSSION

Debtor's Motion To Confirm Amended Plan (Dckt. 36) is set for confirmation hearing the same day as the hearing on this motion. A review of the docket shows the court denied confirmation on the basis that 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).

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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 granted, and the 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 Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on September 9, 2019. 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 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 Plan is denied.</p>

The debtor, Nicholas Richard Upton and Angela Crystal Upton ("Debtor") seek confirmation of the Chapter 13 Plan. The Plan provides for payments of \$4,200 for 7 months, \$1,600 for 53 months, and 100 percent dividend to unsecured claims totaling \$41,342.30. Plan, Dckt. 40. 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 4, 2019. Trustee opposes confirmation on the basis that:

1. Debtor is delinquent \$1,600 in plan payments.
2. The Plan additional provisions state "Payments shall not be made to the United States Department of Education for Student Loans." It is unclear if this claim is paid outside the plan.
3. Amended Schedule I decreased stated income from \$7,857.51 to \$5,150.00, but no documentation was provided in support of stated income.

DISCUSSION

The Chapter 13 Trustee asserts that Debtor is \$1,600 delinquent in plan payments, which represents slightly less than one monthly payment. Before the hearing, another plan payment will be due. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Additionally, the plan by its terms excludes payment to unsecured creditor United States Department of Education for Student Loans. Whether Debtor is not paying this claim, or paying the claim outside the plan, disparate treatment is being provided among unsecured claims in violation of 11 U.S.C. § 1322(b)(1).

Finally, Debtor has Amended Schedules to reduce stated income. Without documentation supporting the current stated income, to “prove-up,” the plan does not appear feasible. 11 U.S.C. § 1325(a)(6).

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

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

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

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

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

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

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

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

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

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. No opposition was stated 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 Debtor is delinquent \$4,539.15 in plan payments. Another payment of \$4,539.15 is due prior to the hearing. Debtor has paid \$0.00 into the Plan.

SEPTEMBER 10, 2019 HEARING

At the September 10, 2019 hearing the court granted a continuance to allow Debtor to become current. Civil Minutes, Dckt. 22.

DISCUSSION

Trustee's objections are well-taken. Debtor is \$4,539.15 delinquent in plan payments, which represents less than one month of the \$4,539.15 plan payment. Before the hearing, another plan payment will be due. According to Trustee, the Plan in § 2.01 calls for payments to be received by Trustee not

later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

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

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

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

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

THRU #25

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on September 18, 2019. By the court's calculation, 34 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). 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.

The Motion to Avoid Judicial Lien is XXXXX.

This Motion requests an order avoiding the judicial lien of 4JK's Investments against property of the debtors, Richard Dunn and Susan Dunn ("Debtor") commonly known as 3011 Chaucer Way, Shasta Lake, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$5,075.00. Exhibit A, Dckt. 22. An abstract of judgment was recorded with Shasta County on August 6, 2018, that encumbers the Property. *Id.*

In further reviewing the Recorded Abstract, the judgment creditor is clearly stated to be:

Carter-Jones Collection Service, Inc., an Oregon Corporation dba Northern Credit Service.

Id. Despite the Motion requesting avoidance of the lien of 4JK's Investments, Carter-Jones Collection Service, Inc. was served the Motion.

At the hearing the parties address who the actual party in interest is, xxxxxxxxxxxxxxxx.

~~Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$347,000.00 as of the petition date. Dekt. 1. The unavoidable and senior liens that total \$279,887.97 as of the commencement of this case are stated on Proof of Claim, No. 8, filed by the holder of the first Deed of Trust. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$67,599.00 on Schedule C. Dekt. 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 debtors, Richard Dunn and Susan Dunn ("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 Carter-Jones Collection Service, Inc., an Oregon Corporation dba Northern Credit Service., California Superior Court for Siskiyou County Case No. CVC7-2017-1154, recorded on August 6, 2018, Document No. 2018-0021808, with the Shasta County Recorder, against the real property commonly known as 3011 Chaucer Way, Shasta Lake, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.~~

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the 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 18, 2019. 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 -----

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

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

- A. Debtor proposes plan payments of \$2,987 where Schedules I and J show net disposable monthly income of \$3,153.54.
- B. Debtor has not provided for the secured claim of 4JK.
- C. Debtor's plan may unfairly discriminate against unsecured claims where the secured claim of 4JK, based on a judgement lien, is avoidable.

DEBTOR'S REPLY

Debtor filed a Response indicating that a lien avoidance motion is pending the same day as this hearing, and that the remaining objections will be addressed in the order confirming the plan.

DISCUSSION

The present proposed plan relies on a pending Motion to avoid a judicial lien. That Motion is set for hearing the same day as the hearing on this Objection.

The Debtor has proposed addressing Trustee's other grounds for objection in the order confirming the plan.

At the hearing, ~~xxxxxxxxxxxxxxxxxx~~.

~~—————The Plan does comply 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 Richard Lee Dunn and Susan Diane Dunn's ("Debtor") Chapter 13 Plan filed on August 7, 2019, 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.~~

THRU #27

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 19, 2019. 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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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 the plan relies on valuing certain secured claims (which have yet to be valued), and that no middle name was provided on Debtor's Voluntary Petition.

A review of the Chapter 13 Plan shows it proposes to value two separate secured claims of Schools Financial Credit Union. Dckt. 13. Debtor has filed a Motion (Dckt. 23) to value one of those claims set for hearing October 22, 2019, but there is no pending Motion for the other secured claim. Without both secured claims being valued at the amounts stated in the Plan, the Plan is not feasible, and therefore not confirmable. 11 U.S.C. § 1325(a)(6).

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

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

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

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

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

Final Ruling: No appearance at the October 22, 2019, hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on September 17, 2019. By the court's calculation, 35 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 Schools Financial Credit Union ("Creditor") is granted, and Creditor's secured claim is determined to have a value of \$3,000.00.

The Motion filed by Juan A. Almanza ("Debtor") to value the secured claim of Schools Financial Credit Union ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 25. Debtor is the owner of a 2013 Nissan Sentra ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$3,000.00 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).

In Debtor's Declaration, Debtor adds the following details to describe the condition of the Vehicle:

- A. Air conditioner not working.
- B. Dents on both passenger side doors (front/rear)
- C. Front end damage due to car accident
- D. Front bumper not aligned/connected properly

- E. Front cigarette lighters for mobile phone charge not working
- F. Scratched rear bumper / replaced due to accident
- G. Door/rear lining for preventing water entry not attached
- H. Radio not receiving all channels/antenna problem

Declaration, Dckt. 25.

Creditor's Proof of Claim

Creditor filed Proof of Claim, No. 8 ("Claim"), on August 27, 2019. The Claim is stated to be fully secured in the amount of \$4,290.00, with the Vehicle's value stated to be \$5,524.00.

DISCUSSION

While Proof of Claim No. 8 is prima facie evidence of a claim, the Creditor has the actual burden of proof on the claim if that prima facie evidence is rebutted.

Proof of Claim No. 8, in which it is asserted that the Vehicle is worth \$5,524.00, is signed by Rebecca Hammond, a collection specialist employed by Creditor. Nothing was included to indicate Hammond had knowledge of the actual condition of the Vehicle, Hammond has not provided testimony to support such opinion or that Hammond can provide such expert testimony..

In the Attachments to Proof of Claim 8, a Kelly Blue Book valuation and Kelly Blue Book Retail Breakdown are included (but not filed in opposition to the Motion as authenticated, admissible evidence contradicting the Debtor's proposed valuation). The Former indicates a retail value of \$6,422.00, and the latter a value of \$13,550.00.

As stated, *supra*, the Debtor provided significant detail as to the Vehicle's condition. These details, which Creditor has not demonstrated a knowledge of when providing its valuation, affect the value of the Vehicle.

The lien on the Vehicle's title secures a purchase-money loan incurred on December 6, 2014, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$4,290.39. Declaration, Dckt. 25. 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 \$3,000.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion to Value Collateral and Secured Claim filed by Juan A. 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 pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Schools Financial Credit Union (“Creditor”) secured by an asset described as 2013 Nissan Sentra (“Vehicle”) is determined to be a secured claim in the amount of \$3,000.00, 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 \$3,000.00 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 September 10, 2019. By the court's calculation, 42 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the 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 XXXXXX.
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The Chapter 13 Trustee, David Cusick ("Trustee"), filed this Objection on the basis that two plans were filed in this case—the first without a date and signature, and the second an apparently completed, signed version of the plan. Trustee argues it is unclear whether a second Motion will need to be brought for the second plan.

The debtor, Rachelle Ann Stratton's ("Debtor") counsel filed a Reply on September 10, 2019, confirming that the first plan erroneously did not have the correct signature page, and that the second plan was filed merely to provide the signature. Dckt. 28.

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 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 **XXXXXX**.

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 10, 2019. By the court's calculation, 42 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the 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 the debtors, Michael Eugene Boyd and Sandra Danyelle Palen Boyd ("Debtor"), could be paying more into their plan and therefore the plan is not Debtor's best efforts.

Trustee specifically that Debtor's average monthly income is \$24,059.12, and not the \$17,407.74 stated. Trustee also notes there are expenses for telephone that may not be necessary, and there is a monthly deduction for repayment of retirement loan of \$847.69 that may not continue through the life of the plan.

DEBTOR'S REPLY

Debtor filed a Reply on October 15, 2019. Dckt. 22. Debtor argues that the income listed on Schedule I is prospective. Debtor was working 90 hours of overtime bi-weekly, and going forward will work 60 hours per week.

Debtor argues further that the \$665 per month expense is not just for telephone, but for telephone, cell phone, internet, satellite, and cable services. Debtor also states that while the Debtor's repayment of 3 retirement loans will not continue throughout the plan term, that schedules will later be amended to reflect subsequent changes (though Debtor is anticipated to further reduce work hours).

DISCUSSION

The present case involves a Debtor with substantial monthly income. Because of that substantial income, Debtor in several respects is close to the line on whether the plan is Debtor's best efforts, as required by 11 U.S.C. § 1322.

First, the Trustee reports that the Debtor may have several thousand dollars of income above what is stated on Schedule I. In response to this ground for opposition, Debtor testifies:

Michael Boyd, Sr. **will** reduce the number of overtime hours he works and **will** work an average of 60 hours per week. Schedule I provides our best estimate of our future income based on the reduction of overtime hours worked.

Declaration ¶ 4, Dckt. 23(emphasis added).

Debtor's response on its face fails to address the grounds for opposition, because it is merely stated that Debtor will (at some unspecified future time) reduce his hours. The necessary inference based on that statement is that Debtor's income is in fact currently higher than stated under penalty of perjury on Schedule I by several thousand dollars.

Another concern is that Debtor provides no specific information. Debtor was purportedly working 90 hours of overtime a week, but it is not stated what the overtime hours going forward will be. Further, Debtor does not testify as to why Debtor is working less hours going forward.

The second concern is over Debtor's expense of \$665 for "telephone." Debtor argues here that the expense is actually for telephone, cell phone, internet, satellite, and cable services, and therefore is justified. But, Debtor has not attempted to prove-up this assertion with anything beyond Debtor's word. Debtor could easily have provided a few months' telephone, cell phone, internet, satellite, and cable service bills to show the reasonable, necessary monthly expense.

Without demonstrating the expenses listed on Schedule J are reasonable, the plan is not debtor's best efforts and is not confirmable.

A further review of Schedule J shows expenses that are not modest. Debtor has a household of 5, listing 3 dependents—a grandson (aged 8), an adult son (aged 19), and a mother (aged 72).

No contribution of income is reported for the adult son or mother.

Some of the necessary, reasonable monthly expenses are stated on Schedule J to be:

6. Utilities:

6a. Electricity, heat, natural gas	6a. \$ 250.00
6b. Water, sewer, garbage collection	6b. \$ 79.00

6c. Telephone, cell phone, Internet, satellite, and cable services	6c. \$ 665.00
6d. Other. Specify: Firewood	6d. \$ 162.50
7. Food and housekeeping supplies	7. \$ 953.12
8. Childcare and children's education costs	8. \$ 760.00
9. Clothing, laundry, and dry cleaning	9. \$ 425.00
10. Personal care products and services	10. \$ 175.00
11. Medical and dental expenses	11. \$ 150.00
12. Transportation. Include gas, maintenance, bus or train fare.	12. \$ 475.00
13. Entertainment, clubs, recreation, newspapers, magazines, and books	13. \$ 300.00
14. Charitable contributions and religious donations	14. \$ 65.00
15. Insurance.	
15a. Life insurance	15a. \$ 0.00
15b. Health insurance	15b. \$ 0.00
15c. Vehicle insurance	15c. \$ 200.00
15d. Other insurance. Specify:	15d. \$ 0.00

Trustee's third ground for opposition is that Debtor is deducting \$800+ a month towards repayment of retirement loans. As to this point, Debtor argues that they will address the issue later, but that it will likely not be an issue because Debtor will continue to reduce income in order to avoid increasing the plan payment.

As to this third point, it appears any order confirming this or any plan of the Debtor in this case will need to require annual supplemental Schedules I and J.

As stated above, the Plan is not confirmable because it is not Debtor's best efforts. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is sustained, and the Plan is not confirmed.

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

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

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of

the pleadings, evidence, arguments of counsel, and good cause appearing,

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

THRU #31

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

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

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

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

The 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 XXXX.

Miriam Perez, a creditor, opposes confirmation of the Plan on the basis that:

- A. Debtors' Plan does not accurately reflect their income or expenses. Specifically noting that Debtors stated at the Meeting of Creditors that their in-laws pay half of their mortgage and that they pay spousal and child support in greater amount than reflected on their schedules.
- B. Creditor also claims Debtors have undervalued their real property.

DEBTORS' RESPONSE:

Debtors state that they have amended their schedules to address inadvertent omissions. Debtors dispute Creditor's assertion that they have not properly valued their real property.

DISCUSSION

At the hearing -----

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

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

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

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

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

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

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

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

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

The 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. Debtors' is not feasible based on debtors filed Schedules I and J.

DISCUSSION

Trustee's objections are well-taken. A review of Debtor's Schedules the plan payments are not feasible. 11 U.S.C. § 1325(a)(6).

The hearing was continued on October 1, 2019 to allow additional time for the Debtor to resolve the Objection. **At the hearing ----**

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

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

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

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

IT IS ORDERED that the Objection 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, Debtor's Attorney, and Office of the United States Trustee on September 18, 2019. 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 -----
-----.

The Objection to Confirmation of Plan is XXXXXX

U.S. Bank National Association ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that the plan does not provide for Creditor's secured claim.

Creditor's claim is alleged to be secure by a vehicle identified as a 2009 BMW I SERIES, VIN ending in 0869 ("Vehicle").

Proof of Claim, No. 7, filed by Creditor on September 6, 2019, provides *prima facie* evidence that Creditor holds a secured claim in the amount of \$6,074.86. The plan does not provide for that claim.

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

provides for a secured claim, however.

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

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

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

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

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

Notwithstanding the absence of a requirement in 11 U.S.C. § 1322(a) that a plan provide for a secured claim, failure to provide for a secured claim often invokes doubt as to the plan's feasibility.

Here however, the Vehicle is not listed on Debtor's schedules as an asset. Neither was it reported on Debtor's schedules that the Vehicle was repossessed. Therefore, it is unclear whether Debtor intentionally left the Vehicle off with the intent of treating Creditor's claim as a Class 3, or if it was erroneously omitted.

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 U.S. Bank National Association ("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
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.

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 Specialized Loan Servicing, LLC, Chapter 13 Trustee, and Office of the United States Trustee on September 18, 2019. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

As discussed below, service was made on a loan servicer, Specialized Loan Servicing, LLC, who does not actually hold a claim to be valued. While Specialized Loan Servicing, LLC may be the actual creditor's loan servicer, there is no evidence showing that the loan servicer is the agent for service of process.

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 Specialized Loan Servicing, LLC ("Creditor") is denied without prejudice.

The Motion to Value filed by Kimberly Karl Peters ("Debtor") seeks to value the secured claim of Specialized Loan Servicing, LLC at \$0.00 at the time of filing. Motion, Dckt. 36. The secured claim being valued is stated to be a second deed of trust on Debtor's real property commonly known as 8960 Sutters Gold Drive, Sacramento, California ("Property"), which Property Debtor values at \$295,000.00. *Id.*

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition to the Motion on September 30, 2019. Dckt. 21. Trustee argues the actual property securing the claim herein to be valued is commonly known as 6629 5th Avenue, Rio Linda, California.

Morgan Stanley Mortgage Capital Holdings LLC ("Creditor"), appearing through its loan servicer Specialized Loan Servicing, LLC, filed an Opposition to the Motion on October 4, 2019. Dckt. 36. Creditor states its claim is secured by the Property, but argues the Property was worth \$355,311.00 at the time of filing. Because there is some equity and the Property is Debtor's primary residence, Creditor argues the secured claim cannot be bifurcated into secured and unsecured portions.

**IDENTIFICATION OF THE PROPER
PARTY IN INTEREST**

As discussed above, the Motion identifies the creditor as “Specialized Loan Servicing, LLC.” That is not correct. From the evidence provided, Specialized Loan Servicing, LLC is merely a loan servicer. Specialized Loan Servicing, LLC does not hold any claim for which the court can issue an order determining what portions are secured and unsecured.

The court will not issue orders on incorrect or partial parties that are ineffective. The Motion is denied 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 Motion to Value Collateral and Secured Claim filed by Kimberly Karl Peters (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on October 2, 2019. By the court's calculation, 20 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 Prog Leasing LLC dba Progressing Leasing ("Creditor") is granted, and Creditor's secured claim is determined to have a value of \$2,000.00.

The Motion filed by Erika Renee Williams ("Debtor") to value the secured claim of Prog Leasing LLC dba Progressing Leasing ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 16. Debtor is the owner of personal property listed on Schedule A/B and identified as follows:

1. 3-person fabric sofa and fabric recliner with ottoman.
2. Queen sized mattress set with headboard and frame.
3. 7-drawer dresser.
4. 2 night stands.
5. 2 lamps.

6. 1 Breakfast table.
7. 4 chairs.

Debtor seeks to value the Property at a replacement value of \$2,000.00 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 lien on the Property secures a purchase-money loan incurred in March 2017, which is more than one year prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$4,500.00. Declaration, Dckt. 16. Therefore, Creditor's claim secured by a lien against the Property is under-collateralized. Creditor's secured claim is determined to be in the amount of \$2,000.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion to Value Collateral and Secured Claim filed by Erika Renee 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 the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Prog Leasing LLC dba Progressing Leasing ("Creditor") secured by personal property listed on Schedule A/B and identified as follows:

1. 3-person fabric sofa and fabric recliner with ottoman.
2. Queen sized mattress set with headboard and frame.
3. 7-drawer dresser.
4. 2 night stands.
5. 2 lamps.
6. 1 Breakfast table.
7. 4 chairs.

is determined to be a secured claim in the amount of \$2,000.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$2,000.00 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 motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on September 24, 2019. By the court's calculation, 38 days' notice was provided. 14 days' notice is required.

The Motion to Extend the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the 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 Extend the Automatic Stay is denied.

Mary Jane Doherty ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 19-22246) was dismissed on August 28, 2019, after Debtor fell delinquent in plan payments and failed to propose an amended plan after confirmation of the pending plan was denied. *See* Order, Bankr. E.D. Cal. No. 19-22246, Dckt. 40, August 28, 2019. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because she was transitioning between jobs. Debtor asserts that her situation now is stable.

DISCUSSION

11 U.S.C. § 362(c)(3)(B)(emphasis added) states the following with respect to extension of the automatic stay in a second case where the first was dismissed within the preceding year:

on the motion of a party in interest for continuation of the automatic stay and upon notice and a hearing, **the court may extend the stay in particular cases** as to any or all creditors (subject to such conditions or limitations as the court may then impose) **after notice and a hearing completed before the expiration of the 30-day period** only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed;

The present case was filed on September 10, 2019. 30 days from that date is October 10, 2019. Because this hearing was set for October 22, 2019, it could not be completed before the expiration of the 30-day period. Therefore, the court cannot extend the automatic stay.

The Motion is denied.

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

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

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

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

IT IS ORDERED that the Motion to extend the automatic stay, which terminates only as to Debtor pursuant to 11 U.S.C. § 362(c)(3)(A) thirty days after the commencement of this case, is denied. No determination is made by the court to the other provisions of 11 U.S.C. § 362(a) that apply to property of the bankruptcy estate.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on October 2, 2019. By the court's calculation, 20 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 First Investors Servicing Corporation ("Creditor") is granted, and Creditor's secured claim is determined to have a value of \$6,662.00.

The Motion filed by Edward Jay Vint ("Debtor") to value the secured claim of First Investors Servicing Corporation ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 22. Debtor is the owner of a 2013 Chrysler 200 Touring Sedan ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$6,662.00 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 Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on October 11, 2019. Dckt. 29.

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on January 2014,

which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$9,500.00. Declaration, Dckt. 22. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of \$6,662.00 , 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 Edward Jay Vint ("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 First Investors Servicing Corporation ("Creditor") secured by an asset described as 2013 Chrysler 200 Touring Sedan ("Vehicle") is determined to be a secured claim in the amount of \$6,662.00 , and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$6,662.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

FINAL RULINGS

37. [19-23497-C-13](#) **MONICA ROBINSON** **MOTION TO CONFIRM PLAN**
[RJM-1](#) **Rick Morin** **8-28-19 [21]**

Final Ruling: No appearance at the October 22, 2019, hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on August 28, 2019. By the court’s calculation, 55 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 Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Monica Helen Robinson (“Debtor”) has provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Response indicating non-opposition / statement of non-opposition on September 11, 2019. Dckt. 27. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Monica Helen Robinson (“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 August 28, 2019, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Final Ruling: No appearance at the October 22, 2019 hearing is required.

Local Rule 3007-1 Objection to Claim—Hearing Not Required.

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

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

The hearing on the Objection to Proof of Claim Number 10-1 of Christine Bunt is continued to 2:00 p.m. on November 26, 2019.

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

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

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

CREDITOR'S RESPONSE:

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

SEPTEMBER 10, 2019 HEARING

At the hearing California counsel for creditor appeared, confirmed he had been retained, and stated that a response would be filed. Counsel believed that an amended proof of claim may be filed based on an accounting of the payments. The court continued the hearing. Civil Minutes, Dckt. 44.

STIPULATION FOR CONTINUANCE

On October 2, 2019, the parties filed a joint Stipulation requesting a 30 days continuance. Dckt. 51.

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.

In light of the parties' stipulation, the court shall continue the hearing.

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

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

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

IT IS ORDERED that the hearing on the Objection to Proof of Claim Number 10-1 of Christine Bunt is continued to 2:00 p.m. on November 26, 2019.

Final Ruling: No appearance at the October 22, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 6, 2019. By the court's calculation, 46 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 Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

<p>The Motion to Confirm the Amended Plan is granted.</p>
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11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Charles Cantrell Love ("Debtor") has provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), Response indicating non-opposition / statement of non-opposition The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Charles Cantrell Love ("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 6, 2019, is confirmed. Debtor's Counsel shall

prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Final Ruling: No appearance at the October 22, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on September 2, 2019. By the court's calculation, 50 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.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Mark David Thibodeau and Annette Delores Thibodeau ("Debtor"), have filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response indicating non-opposition on September 30, 2019. Dckt. 106. 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, Mark David Thibodeau and Annette Delores Thibodeau ("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, 2019, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

Final Ruling: No appearance at the October 22, 2019, hearing is required.

Local Rule 9014-1(f)(1) Motion—Hearing Not 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 10, 2019. By the court’s calculation, 42 days’ notice was provided. 14 days’ notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the 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. However, upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument.

The Objection to Confirmation of Plan is sustained.

The debtors, Joshua Michael Bartucca and Michele Christine Bartucca (“Debtor”), filed an Amended Plan and correspond confirmation motion on October 3, 2019.

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 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 22, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on September 17, 2019. By the court’s calculation, 35 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 Ally Bank (“Creditor”) is granted, and Creditor’s secured claim is determined to have a value of \$21,000.00.

The Motion filed by Joshua Michael Bartucca and Michele Christine Bartucca (“Debtor”) to value the secured claim of Ally Bank (“Creditor”) is accompanied by Debtor’s declaration. Declaration, Dckt. 28. Debtor is the owner of a 2016 Jeep Cherokee (“Vehicle”).

The Chapter 13 Trustee, David Cusick (“Trustee”), and Creditor both filed Oppositions to the Motion, on September 30, 2019, and October 7, 2019, respectively. Dckts. 32, 43.

Thereafter, all the parties entered and filed a Stipulation providing that Creditor’s secured claim is in the amount of \$21,000.00. Dckt. 49.

DISCUSSION

The lien on the Vehicle’s title secures a purchase-money loan incurred on June 28, 2016,

more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$26,822.50. Proof of Claim, No. 20. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of \$21,000.00, the stipulated to 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 Joshua Michael Bartucca and Michele Christine Bartucca ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Ally Bank ("Creditor") secured by an asset described as 2016 Jeep Cherokee ("Vehicle") is determined to be a secured claim in the amount of \$21,000.00, 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 \$21,000.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

Final Ruling: No appearance at the October 22, 2019 hearing is required.

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

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

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

The Motion to Avoid Lien is granted, and the judgment lien of Cochran Firm Criminal Defense Section, PC is avoided in its entirety.

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

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

SEPTEMBER 10, 2019 HEARING

At the September 10, 2019 hearing the court continued the hearing to allow Debtor file an Amended Schedule C to claim an exemption in the Property. Civil Minutes, Dckt. 111.

DISCUSSION

Since the Prior hearing, Debtor filed Amended Schedule C. Dckt. 109.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$782,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total \$943,426.09 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure section 703.140(b)(5) in the amount of \$1.00 on Debtor's Amended Schedule C. Dckt. 109. Since there is no exemption claimed the exemption cannot be impaired. Accordingly, the Debtor's Motion will be denied without prejudice to the Debtor renewing the Motion if Debtor is able to claim the property as exempt and files an Amended Schedule C.

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

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

IT IS ORDERED that the judgment lien of Cochran Firm Criminal Defense Section, PC, California Superior Court for Sacramento County Case No. 06CS01188, recorded on October 23, 2006, Book 20061023 and Page 0066, with the Sacramento County Recorder, against the real property commonly known as 7706 El Douro Drive, Sacramento, 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 22, 2019, hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on August 13, 2019. By the court's calculation, 70 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

<p>The Motion to Confirm the Plan is granted.</p>
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11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Byron Gilbert Pickle ("Debtor"), has provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response indicating non-opposition on August 28, 2019. Dckt. 28. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

The Motion to Confirm the Chapter 13 Plan filed by the debtor, Byron Gilbert Pickle ("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 August 13, 2019, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the

proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Final Ruling: No appearance at the October 22, 2019, hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on September 19, 2019. By the court’s calculation, 33 days’ notice was provided. 28 days’ notice is required.

The Motion to Value Collateral and Secured Claim has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). 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 PNC Bank (“Creditor”) is granted, and Creditor’s secured claim is determined to have a value of \$35,207.00.

The Motion filed by Eric Ali’i Fueva and Rosalia Theresa Inez Fueva (“Debtor”) to value the secured claim of PNC Bank (“Creditor”) is accompanied by Debtor’s declaration. Declaration, Dckt. 26. Debtor is the owner of a 2016 Chevrolet Silverado (“Vehicle”). Debtor seeks to value the Vehicle at a replacement value of \$35,207.00 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).

Creditor’s Proof of Claim

Creditor filed Proof of Claim, No. 17, on September 18, 2019. The Claim is stated to be secured in the amount of \$46,629.92. However, no value is stated for the Vehicle.

DISCUSSION

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). As part of its burden of producing substantial evidence to rebut the presumptive validity, the objecting party bears the burden of producing substantial evidence as to the value of the collateral securing any portion of the claim. *In re Austin*, 583 B.R. 480, 483 (B.A.P. 8th Cir. 2018). 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. *Id.* 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.

The Proof of Claim is not supported by any valuation report, or any other documentation. In fact, the Claim does not even assert a value for the collateral.

Debtor, as the owner of the vehicle, states Debtor's opinion as to value, concluding that it is \$35,207.00. Declaration, Dckt. 26. As the owner, the 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). While Debtor could have made more of an effort in her testimony to describe the condition of the vehicle, any deferred maintenance, damage, required clean-up, such lack of attention to her testimony does not render it irrelevant or not probative. It is akin to Creditor not bothering to include a KBB or NADA authenticated valuation with the Proof of Claim, which would enhance the probative value to be overcome.

The lien on the Vehicle's title secures a purchase-money loan incurred on August 13, 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 \$46,629.92. Proof of Claim, No. 17. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of \$35,207.00, 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 Eric Ali'i Fuega and Rosalia Theresa Inez Fuega ("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 PNC Bank ("Creditor") secured by an asset described as 2016 Chevrolet Silverado ("Vehicle") is determined to be a secured claim in the amount of \$35,207.00, 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 \$35,207.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

Final Ruling: No appearance at the October 22, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 5, 2019. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1). That requirement was met.

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

<p>The Motion to Confirm the Amended Plan is granted.</p>
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11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Terry Danso (“Debtor”) has provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Non-Opposition on October 7, 2019. Dckt. 64. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Terry Danso (“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 August 6, 2019, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form,

and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.