UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

October 22, 2019 at 3:00 p.m.

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1. **19-24802-E-13** **GREGORY/CHO FRENCH** **MOTION TO VALUE COLLATERAL OF**
CK-2 **Catherine King** **TOYOTA MOTOR CREDIT**
2 thru 4 **9-16-19 [21]**

Tentative Ruling: The Motion to Value Secured Claim has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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.

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, and Office of the United States Trustee on September 16, 2019. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

The Motion to Value Collateral and Secured Claim has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). 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 Value Secured Claim of Toyota Motor Credit Corporation ("Creditor") is denied without prejudice.

The Motion filed by Gregory W French and Cho Y French ("Debtor") to value the secured claim of Toyota Motor Credit Corporation ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 24. Debtor is the owner of a 2013 Lexus ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $17,848.00 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).

Proof of Claim, No. 4, was filed by Creditor on August 9, 2019. The Proof of Claim asserts a secured claim in the amount of $20,456.81.

DISCUSSION

Review of Motion

The Motion must state with particularity the grounds and the relief requested. Fed. R. Bankr. P. 9013. Here, the sum total of grounds stated are:

A. Debtor seeks to have the court to value collateral of Creditor Toyota Motor Credit.

B. Creditor Toyota Motor Credit has filed a secured claim in the amount of ($14,488.19).

C. The collateral is a 2013 Ford Edge SEL.

D. The Debtor has determined the value to be $8,774.

E. Kelly Blue Book states a value (presumably for the collateral, but such is not stated in the Motion) of $8,774 for a private party sale.

Motion, p. 1:18-26; Dckt. 21. No other grounds are stated.

The Motion then goes further, stating with particularity the following relief which is to be stated in the order granted pursuant to the Motion:

A. The court determine the secured claim of Creditor to be ($8,774).

B. The court pre-approve treatment of the secured claim of Creditor to be paid with monthly payments of $170.65, which includes interest of 6.25%.

C. The court disallow the unsecured portion of Creditor's claim unless the Creditor "timely" files another proof of claim.

Motion, p. 2:1-7; *Id.*

While the Motion is skinny, it may have sufficient flesh on the bones to be adequate. However, the relief requested goes well beyond what is permitted under the Bankruptcy Code. 11 U.S.C. § 506(a) allows the court to determine the secured and unsecured portions of a creditor's allowed claim. When the court does so, that claim is bifurcated into the secured claim and the unsecured claim. 11 U.S.C. § 506(a). Nothing more and nothing less.

The secured and unsecured claim determination process is not a pre-confirmation pre-approval process to bind creditors and the court in what are permissible, confirmable plan terms. It does not allow Debtor to sneak in piecemeal plan terms by creditors and the court to pull off "gotcha" schemes for confirmation.

Further, there is no legal basis for the court to disallow the unsecured portion of a creditor's claim as determined by an order issued pursuant to 11 U.S.C. § 506(a). The secured and unsecured valuation process is not a disguised claim objection to subvert the provisions of 11 U.S.C. § 502 and Federal Rule of Bankruptcy Procedure 3007.

That Debtor would seek to obtain relief from the court which is not permitted under the Bankruptcy Code is not indicative of good faith in filing this case or prosecuting a plan in this case. Debtor is represented by experienced bankruptcy counsel, so seeking such relief which is not permitted under the Bankruptcy Code cannot be "merely a mistake" or "clerical error."

As clearly stated by the Supreme Court in *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), and well known to all bankruptcy attorneys, federal court is not a process by which attorneys and parties are rewarded for requesting relief not permitted by the law if they can "sneak it by the judge." The Supreme Court has made it clear that federal trial judges are not to just rubberstamp whatever an attorney or party asks for if nobody objects.

Debtor's Lack of Evidence of Value

While the Debtor argues that the value of the Vehicle is $17,848.00 and the Debtor relies on the Kelly Blue Book Report which states as follows: "The Kelly Blue Book Report dated September 1,2019 states a value of $17,848.00 for good condition, private party value." Debtor has not authenticated the Kelly Blue Book Report and has not provided an explanation as to why the report is excepted or exempted from FED. R. EVID. 901. Significantly, while Debtor makes a vague, unsupported statement that a Kelly Blue Book Report states a private party value, Debtor does not testify that she has actually read it, how Debtor obtained it, or if Debtor can tell how it came into existence. Rather, it appears that Debtor has signed a declaration without any knowledge of what is stated in it.

The reference that Debtor makes to the unauthenticated Kelly Blue Book Report is to the "private party sale value." This reference is clearly the wrong valuation as required by law stated in 11 U.S.C. § 506(a)(2), which states (emphasis added):

> (2) If the debtor is an individual in a case under chapter 7 or 13, such value with respect to personal property securing an allowed claim shall be **determined based on the replacement value of such property as of the date of the filing of the petition** without deduction for costs of sale or marketing. With respect to property acquired for **personal, family, or household purposes**, replacement value **shall** mean the **price a retail merchant would charge for property of that** kind considering the age and condition of the property at the time value is determined.

Given that mandatory statutory standard is well known to every consumer bankruptcy attorney and Debtor is represented by an experienced consumer bankruptcy attorney, such misrepresentation of the appropriate value cannot be inadvertent. Rather, it is indicative of Debtor not filing and not prosecuting a bankruptcy case in good faith.

Though they could, as owners, express a value for the vehicle. Debtor's declaration is devoid of any testimony in which either debtor states a person opinion of value. Rather, they merely tell the court to read the unauthenticated Kelly Blue Book (legally incorrect standard) personal property value.

Even though the Motion is unopposed, Debtor has failed to provide the court with properly authenticated, credible evidence of value. Rather, Debtor seeks to have the court issue an order merely because the Debtor tells the court to issue the order. Further, Debtor seeks to have the court grant relief for which no relief can (not merely may) be granted. As discussed above, such relief requested in this motion is not indicative of Debtor acting in good faith.

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 Gregory W French and Cho Y French ("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.

2.	**19-24802-E-13 CK-3**	**GREGORY/CHO FRENCH Catherine King**	**MOTION TO VALUE COLLATERAL OF TOYOTA MOTOR CREDIT 9-16-19 [26]**

APPEARANCES OF CATHERINE KING, COUNSEL FOR DEBTOR AND AUSTIN NAGEL, COUNSEL FOR CREDITOR REQUIRED FOR HEARING

TELEPHONIC APPEARANCES PERMITTED

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, and Office of the United States Trustee on September 16, 2019. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Secured Claim of Toyota Motor Credit Corporation ("Creditor") is denied without prejudice.

The Motion filed by Gregory W French and Cho Y French ("Debtor") to value the secured claim of Toyota Motor Credit Corporation ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 29. Debtor is the owner of a 2013 Ford Edge SEL ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $8,774.00 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).

Proof of Claim, No. 20, was filed by Creditor on August 29, 2019. The Proof of Claim asserts a secured claim in the amount of $14,110.56.

CREDITOR'S OPPOSITION

On October 8, 2019, Creditor filed an Opposition. Dckt. 49. Creditor's Opposition asserts that the Vehicle's replacement value is $14,962.23. Opposition, Dckt. 49. Creditor determined the Vehicle's value is $13,101.67 based on the Desktop Appraisal completed Adam Zacher of Auto Inspection Service. Declaration, Dckt. 51. Creditor argues an additional $1,860.56 for the cost of the optional Service Contract should be added to the replacement value, to total $14,962.23.

DISCUSSION

Review of Motion

The Motion must state with particularity the grounds and the relief requested. Fed. R. Bankr. P. 9013. Here, the sum total of grounds stated are:

A. Debtor seeks to have the court to value collateral of Creditor Toyota Motor Credit.

B. Creditor Toyota Motor Credit has filed a secured claim in the amount of ($14,488.19).

C. The collateral is a 2013 Ford Edge SEL.

D. The Debtor has determined the value to be $8,774.

E. Kelly Blue Book states a value (presumably for the collateral, but such is not stated in the Motion) of $8,774 for a private party sale.

Motion, p. 1:18-26; Dckt. 26. No other grounds are stated.

The Motion then goes further, stating with particularity the following relief which is to be stated in the order granted pursuant to the Motion:

A. The court determine the secured claim of Creditor to be ($8,774)
B. The court pre-approve treatment of the secured claim of Creditor to be paid with monthly payments of $170.65, which includes interest of 6.25%.

C. The court disallow the unsecured portion of Creditor's claim unless the Creditor "timely" files another proof of claim.

Motion, p. 2:1-6; *Id.*

While the Motion is skinny, it may have sufficient flesh on the bones to be adequate. However, the relief requested goes well beyond what is permitted under the Bankruptcy Code. 11 U.S.C. § 506(a) allows the court to determine the secured and unsecured portions of a creditor's allowed claim. When the court does so, that claim is bifurcated into the secured claim and the unsecured claim.

11 U.S.C. § 506(a). Nothing more and nothing less.

The secured and unsecured claim determination process is not a pre-confirmation pre-approval process to bind creditors and the court in what are permissible, confirmable plan terms. It does not allow Debtor to sneak in plan terms piecemeal by creditors and the court to pull off "gotcha" schemes for confirmation.

Further, there is no legal basis for the court to disallow the unsecured portion of a creditor's claim as determined by an order issued pursuant to 11 U.S.C. § 506(a). The secured and unsecured valuation process is not a disguised claim objection to subvert the provisions of 11 U.S.C. § 502 and Federal Rule of Bankruptcy Procedure 3007.

That Debtor would seek to obtain relief from the court which is not permitted under the Bankruptcy Code is not indicative of good faith in filing this case or prosecuting a plan in this case. Debtor is represented by experienced bankruptcy counsel, so seeking such relief which is not permitted under the Bankruptcy Code cannot be a "merely mistake" or "clerical error."

As clearly stated by the Supreme Court in *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), and well know to all bankruptcy attorneys, federal court is not a process by which attorneys and parties are rewarded for requesting relief not permitted by the law if they can "sneak it by the judge." The Supreme Court has made it clear that federal trial judges are not to just rubberstamp whatever an attorney or party asks for if nobody objects.

Debtor's Lack of Evidence of Value

While the Debtor argues that the value of the Vehicle is $8,774.00 and the Debtor relies on the Kelly Blue Book Report which states as follows: "The Kelly Blue Book Report dated September 1,2019 states a value of $8,774.00 for good condition, private party value." Debtor has not authenticated the Kelly Blue Book Report and has not provided an explanation as to why the report is excepted or exempted from FED. R. EVID. 901. Significantly, while Debtor makes a vague, unsupported statement that a Kelly Blue Book Report states a private party value, Debtor does not testify that she has actually read it, Debtor obtained it, and Debtor can tell how it came into existence. Rather, it appears that Debtor has signed a declaration without any knowledge of what is stated in it.

The reference that Debtor makes to the unauthenticated Kelly Blue Book Report is to the "private party sale value." This reference is clearly the wrong valuation as required by law stated in 11 U.S.C. § 506(a)(2), which states (emphasis added):

> (2) If the debtor is an individual in a case under chapter 7 or 13, such value with respect to personal property securing an allowed claim shall be **determined based on the replacement value of such property as of the date of the filing of the petition** without deduction for costs of sale or marketing. With respect to property acquired for **personal, family, or household purposes**, replacement value **shall** mean the **price a retail merchant would charge for property of that** kind considering the age and condition of the property at the time value is determined.

Given that mandatory statutory standard is well known to every consumer bankruptcy attorney and

Debtor is represented by an experienced consumer bankruptcy attorney, such misrepresentation of the appropriate value cannot be inadvertent. Rather, it is indicative of Debtor not filing and not prosecuting a bankruptcy case in good faith.

Though they could, as owners, express a value for the vehicle. Debtor's declaration is devoid of any testimony in which either debtor states a person opinion of value. Rather, they merely tell the court to read the unauthenticated Kelly Blue Book (legally incorrect standard) personal property value.

Creditor's Evidence of Value

Creditor has provided the testimony of Adam Zacher, who testifies that he has worked as an automobile appraiser for thirteen years. Dckt. 51. Mr. Zacher testifies that he has not inspected the vehicle, but provides his opinion based on information provided by Creditor and Debtor's declaration.

With respect to Debtor's Declaration, the court notes that Debtor has not provided any personal knowledge testimony. First, they state that they make the declaration as being true and correct "to the best of our knowledge." Testimony under penalty of perjury, as every attorney knows, must be personal knowledge, truthful testimony. Fed. R. Evid. 601, 602. Debtor goes further to state that based on "best of knowledge" everything in the Motion is true and correct. Declaration, p. 1:21-22; Dckt. 29. Thus, Mr. Zacher has nothing from the Debtor's Declaration that he has "used" in expressing his opinion.

He then testifies that he has, based on the information provided by Creditor, prepared a "computer generated" appraisal (which is not identified by an exhibit number) which values the Vehicle to be $13,101.67. Declaration ¶ 6, Dckt. 51. This witness offers nothing more in testimony and does not provide the court with any information about this Artificial Intelligence computer generated appraisal and why such third party AI valuation is accurate and credible.

Mr. Zacher's testimony is that he personally, as an expert, has no opinion of value for the vehicle. Just that computer has generated a valuation number and the computer program has an opinion.

Exhibit C is identified as the "A.C.V. Report" (A.C.V. stated to be "Actual Cash Value"). In the remakes section, "ACV" is identified as the thing that has "calculated" the value - with there apparently being no need for any pesky human beings providing any services or intelligence.

The appraisal upon which Creditor wants the court to rely is not signed by anyone - presumably because the computer program has no hands.

The court has no evidence that this "opinion" by this AI device provides the court with expert opinion testimony or credible evidence of value. Fed. R. Evid. 601 et. seq, 701 et. seq, 901 et. seq,

The court, at this point has not been presented with either personal knowledge testimony, expert testimony, or other evidence by which the court can determine the value of the vehicle. The court does not even have Debtor's personal owner opinion testimony of value.

The court being unable to determine the value of the collateral, the Motion is denied without prejudice. Further, Debtor seeks to have the court grant relief for which no relief can (not merely may) be granted. As discussed above, such relief requested in this motion is not indicative of Debtor acting in

good faith.

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 Gregory W French and Cho Y French ("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.

3. **19-24802-E-13 CK-4** **GREGORY/CHO FRENCH Catherine King** **MOTION TO CONFIRM PLAN 9-16-19 [32]**

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 16, 2019. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied without prejudice.

The debtor, Gregory and Cho French ("Debtor"), seek confirmation of the Amended Plan. The Amended Plan provides for payments of $4,675.00 for the first 2 months and then $4,865.00 per month for the remaining 58 months and a no less than 100% dividend on unsecured claims totaling $195,458.31. Amended Plan, Dckt. 35. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on October 8, 2019. Dckt. 54. Trustee opposes confirmation on the following grounds:

1. Debtor is $3,475.00 delinquent in plan payments.

2. Debtor's plan relies on valuing the secured claim of Toyota Motor Credit Corp for the 2013 Lexus.

3. Debtor has not provided all documents required by 11 U.S.C. § 521.

4. Debtor's Schedule I has a typographical error, misstating that $337.77 is

a payroll deduction from Debtor 1 for repayment of retirement loans, where actual amounts withdrawn are from Debtor 2 in the amount of $695.00.

5. Debtor has not provided middle names on the filed petition.

CREDITOR'S OPPOSITION

Creditor opposes confirmation on the basis that the plan values its secured claim too low, that 6.25% is an insufficient interest rate, and that the proposed payment of $170.65 is insufficient to give adequate protection.

DISCUSSION

The Chapter 13 Trustee asserts that Debtor is $3,475.00 delinquent in plan payments, which represents 71% of one month of the $4,865.00 plan payment. Before the hearing, another plan payment will be due. According to the Chapter 13 Trustee, the Plan in § 2.01 calls for payments to be received by the Chapter 13 Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of Toyota Motor Credit Corp. Indeed, Debtor filed the Motion to Value the Secured Claim of Toyota Motor Credit Corp which will be heard until the same day as the Motion to Confirm the Amended Plan. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6). Furthermore, if the secured claim is valued at a higher amount the payment in the proposed plan will be insufficient to offer adequate protection.

The court has also denied a second motion by the Debtor to value a second secured claim.

Debtor has not provided the Chapter 13 Trustee with employer payment advices for the sixty-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv); FED. R. BANKR. P. 4002(b)(2)(A). Debtor has failed to provide all necessary pay stubs. That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Debtor admitted at the Meeting of Creditors that the federal income tax return for the 2018 tax year has not been filed still. Filing of the return is required. 11 U.S.C. §§ 1308, 1325(a)(9). Failure to file a tax return is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

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

Creditor objects to the confirmation of the Plan on the basis that the Plan calls for adjusting the interest rate on its loan with Debtor to 6.25%. Creditor's claim is secured by a 2013 Ford Edge. Creditor argues that this interest rate is outside the limits authorized by the Supreme Court in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). In *Till*, a plurality of the Court supported the "formula approach" for

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

The court agrees with the court in *Cachu* that the correct valuation of the interest rate is the prime rate in effect at the commencement of this case plus a risk adjustment. It may well be that he Debtor's proposed interest rate is proper, but because the claim has not been valued, any such confirmation determination is premature.

Additionally, Debtor and Debtor's counsel have creatively, and over aggressively, attempted to have this court improperly disallow a creditor's claim as part of a motion to value secured claim and to pre-confirm plan terms as part of a motion to value secured claim. Such attempts are not indicative of Debtor having commenced this case in good faith or the Debtor prosecuting this Plan in good faith. Good faith on both are required to confirm a Chapter 13 plan.

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 Confirm the Amended Chapter 13 Plan filed by the debtor, Gregory and Cho French ("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.

4. **19-21026-E-13** **LISA MOORE** **MOTION TO CONFIRM PLAN**
SLE-2 **Steele Lanphier** **8-12-19 [51]**

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 August 12, 2019. By the court's calculation, 71 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied.

The debtor, Lisa Moore ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for payments of $710.00 for 60 months; and no less than a "15"(c)% dividend on unsecured claims totaling $22,678.00(c). Amended Plan, Dckt. 55. 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. 61. Trustee opposes confirmation on the following grounds:

1. The claim of Specialized Loan Servicing is $6,874.73 in default, and thus should be a Class 1 and not a Class 4.

DISCUSSION

Trustee's concerns are still well taken.

Trustee continues to be concerned for the arrearage related to the Specialized Loan Servicing loan. The Creditor's claim states that there is a total of $6,874.73 in arrearages. The plan does not provide payment to this secured creditor. 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.

Debtor argues that she is current on her Specialized Loan Servicing claim. To support this contention, Debtor includes a declaration stating she is current. No other evidence related to payment is provided.

However, according to Creditor's Proof Claim, there is an arrearage of $6,874.73. Proof of Claim is of *prima facie* evidence, and to this day, Debtor has not filed an opposition to said claim. Additionally, the Motion states that Debtor's Counsel will communicate with Creditor's Counsel to solve the issue. Dckt. 51. If this avenue did not work, Counsel would file an objection to the claim. Dckt. 51.

The Plan is not feasible because it provides for a Specialized Loan Servicing as a Class 4 when in fact there is a delinquency to be cured.

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

5. **19-22037-E-13** **PETE GARCIA** **MOTION TO CONFIRM PLAN**
PGM-1 **Peter Macaluso** **9-2-19 [70]**

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 1, 2019. By the court's calculation, 51 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied.

The debtor, Pete A. Garcia ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for payments of $6,000.00 for 56 months; and a dividend of no less than 100% on unsecured claims totaling $7.00. Amended Plan, Dckt. 72. 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 7, 2019. Dckt. 83. Trustee opposes confirmation on the following grounds:

1. Debtor is $4,000.00 delinquent in plan payments.

2. Debtor's Schedule I has inconsistencies related to business income and expenses.

3. Debtor has not provided all documents required by 11 U.S.C. § 521.

4. Debtor's Schedule J has unexplained inconsistencies related to number of dependents and drastic reduction in expenses.

5. Debtor's Schedule H has not been corrected of errors related to whether he lived in a community property state.

6. Debtor has not provided middle names on the filed petition or corrected the date for a previous bankruptcy.

Debtor filed a Response addressing four of the six grounds listed above on October 14, 2019. Debtor stated that Debtor would be current on or before the hearing and that an amended Statement of Financial Affairs form, Schedule H, and Voluntary Petition would be filed before the hearing on this matter. Dckt. 86.

DISCUSSION

The Chapter 13 Trustee asserts that Debtor is $4,000.00 delinquent in plan payments, which represents 66% of the $6,000.00 plan payment. Another plan payment will be due will be due three (3) days after the hearing. According to the Chapter 13 Trustee, the Plan in § 2.01 calls for payments to be received by the Chapter 13 Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). First, Debtor has failed to adequately explain business income on line 8a of the Amended Schedule I. Second, Debtor fails to explain the recent decrease in number of dependents and monthly expenses. These discrepancies put in doubt that Debtor will be able to make plan payments. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Pete A. Garcia ("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.

6.	**19-24838-E-13 DPC-1**	**TERESA/STEVEN GONSALVES Ted Greene**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 9-10-19 [21]**

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 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:

A. Debtors and Debtors' Counsel failed to appear at the First Meeting of Creditors on September 5, 2019.

B. Debtors is $2,789.17 delinquent in plan payments.

C. Debtor has not provided all documents required by 11 U.S.C. § 521, including: 60 days of employer payment advices received prior to the filing of the petition; tax transcripts or tax returns for the most recent pre-petition tax year for which a return was required.

D. Debtors rely on two Motions to Value Collateral that have not been filed.

E. Debtors' plan proposes a $2,789.17 monthly payment but Schedule J list their monthly net income at $2,601.65.

F. Debtor's plan fails to indicate how Debtor's Counsel will be paid or if Counsel will be paid at all.

G. Debtors' voluntary petition, Schedule I, and Statement of Financial Affairs contain errors and/or inconsistencies that must be corrected.

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).

Debtor is $2,789.17 delinquent in plan payments, which represents one month of the $2,789.17 plan payment. Before the hearing, another plan payment will be due. According to Trustee, the Plan in § 2.01 calls for payments to be received by Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

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

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

A review of Debtor's Plan shows that it relies on the court valuing the secured claims of Ally and GM Financial. Debtor has failed to file Motions to Value the Secured Claim of either Ally or GM Financial, however. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor's Plan fails to account for attorneys' fees or if Debtor's Counsel was paid prior to filing this case. Further, Debtor has failed to submit a completed petition that includes the previous bankruptcy; a complete Schedule I that includes Debtor 2's employer's details; and a Statement of Financial Affairs that reflects their proper occupations and income. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is 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.

7. **18-21259-E-13 EJS-1** | **NOEL LOUGHRIDGE** | **Eric Schwab** | **MOTION TO MODIFY PLAN** | **8-20-19 [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.

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 August 20, 2019. By the court's calculation, 63 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is denied.

The debtor, Noel R. Loughridge ("Debtor") seeks confirmation of the Modified Plan because Debtor fell behind on his plan payments due to unexpected car repairs costs, his expenses have increased by $220.00, and to make adjustments for filed claims by unsecured creditors. Declaration, Dckt. 29. The

Modified Plan provides for payments of $1,505.00 for 60 months; and 100% dividend on unsecured claims totaling $53,088.00. Modified Plan, Dckt. 31. 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 September 30, 2019. Dckt. 35. Trustee opposes confirmation on the following grounds:

A. The Proposed Plan will not be completed within 60 months.

B. Debtor fails to provide for arrearage in the amount of $239.21.

DISCUSSION

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Chapter 13 Trustee, the Plan will complete in 63 months because the plan as modified does not account for Trustee fees of approximately $2,912.18. The plan payment will total $64,715.00 and when accounting for Trustee's payment it leaves only $61,802.82 to pay creditors but $64,298.21 are needed. Thus, the Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

Trustee points out that Nationstar Mortgage LLC holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts $239.21 in pre-petition arrearage for a projected escrow shortage. The Modified Plan proposes to pay shortage but fails to provide a classification or a monthly dividend. 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 address all the details related to this supplemental claim.

11 U.S.C. § 1325(a)(1) provides for confirmation of a plan if it complies with Chapter 13 provisions and other applicable Code provisions. Here, Debtor has proposed a plan that is lacking in compliance with the Bankruptcy Code. Debtor has proposed a plan payment of $64,715.00 but has not provided for payment of Trustee's fees in the Plan or a classification and dividend amount for the National Mortgage LLC claim. The Plan does not comply with 11 U.S.C. § 1325(a)(1).

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Noel R. Loughridge ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

8. 18-22764-E-13 EJS-1 — SCOTT DESPER — Eric Schwab — MOTION TO MODIFY PLAN — 8-20-19 [43]

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 August 20, 2019. By the court's calculation, 63 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is denied.

The debtor, Scott David Desper ("Debtor") seeks confirmation of the Modified Plan because he missed payments due to the unexpected move of a roommate, an increase in income due to overtime hours, and to make adjustments now that there have not been any filings by unsecured creditors. Declaration, Dckt. 46. The Modified Plan provides that debtor pay a total of $17, 272.56 from June 2018 through July 2019 and beginning August 2019, Debtor will pay $1,395.00 a month for the remainder of the Plan totaling 60 months. Modified Plan, Dckt. 45. 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 September 30, 2019. Dckt. 53. Trustee opposes confirmation on the following grounds:

A. Debtor is $397.54 delinquent in plan payments.

B. Plan proposes to provide for two unsecured claims but does not provide treatment or a monthly dividend for each claim.

DISCUSSION

The Chapter 13 Trustee asserts that Debtor is $3,950.36 delinquent in plan payments under the Confirmed Plan, which represents multiple months of the $1,395.00 plan payment and would also be delinquent $397.54 even under the proposed modified plan. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

11 U.S.C. § 1325(a)(1) provides for confirmation of a plan if it complies with Chapter 13 provisions and other applicable Code provisions. Here, Debtor has proposed a plan that is lacking in compliance with the Bankruptcy Code. Debtor's proposed plan fails to provide a treatment or a dividend for the Wells Fargo Bank, N.A. supplemental claims. The Plan does not comply with 11 U.S.C. § 1325(a)(1).

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Scott David Desper ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Motion to Confirm the Modified Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

9. **19-25364-E-13 GEL-1** **FONDA HINKLE** **Gabriel Liberman** **MOTION TO AVOID LIEN OF THE NATIONAL COLLECTION AGENCY, INC.** **10-3-19 [16]**

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the 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, and Creditor on October 3, 2019. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted and the judgment lien is avoided in its entirety.

This Motion requests an order avoiding the judicial lien of National Collection Agency ("Creditor") against property of the debtor, Fonda Marie Hinkle ("Debtor") commonly known as 7010 Roca Way, in Sacramento, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $10,768.84. Exhibit B, Dckt. 19. An abstract of judgment was recorded with Sacramento County on March 10, 2009, that encumbers the Property. *Id*. On January 9, 2017, Creditor obtained a renewed judgment in the amount of $19,920.00 (which included the original total judgment plus costs, fees, and interests after judgment). Said renewed judgment was entered in Book No. 20170119, Page Number 1398 with the Sacramento County Recorder. *Id*.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of

$338,400.00 as of the petition date. Dckt. 19. The unavoidable consensual liens that total $212,740.97 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 19. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of $125,659.03 on Schedule C. Dckt. 19.

Performing the arithmetical formula for computing whether the exemption is impaired yields the following results:

FMV.....$338,400
Consensual lien.....($232,740.97)
Homestead Exemption.....($125,659.03)

Value for Lien that
Does not Impair
Exemption.....($20,000)

Thus, 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 in its entirety, 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 Fonda Marie Hinkle ("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 National Collection Agency, California Superior Court for Sacramento County Case No. 34-2008-0021816-CL-CL-GDS, originally recorded on March 10, 2009, Book 20090310 and Page 2522, and the Renewal of Judgment recorded on January 19, 2019, Book 20170119 and Page 1398, with the Sacramento County Recorder, against the real property commonly known as 7010 Roca Way, in 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.

10. **19-22167-E-13** **VICKY SAAVEDRA** **CONTINUED MOTION TO INCUR DEBT**
SLE-3 **Stelle Lanphier**
9-24-19 [38]

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

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

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

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, 7 days' notice was provided. The court issued an Order setting the hearing on shortened notice.

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

The court has now set this for the final hearing.

The Motion to Incur Debt is denied.

The debtor, Vicky Lou Saavedra ("Debtor") seeks permission to purchase a 2020 Toyota Corolla LE with 4 miles on it, with a total purchase price of $20,000.00, and a term of 5 years with a 17.99% fixed interest rate.

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

The Motion states the following with particularity (FED. R. BANKR. P. 9013):

1. Debtor owns a 2013 Hyundai Elantra ("Current Vehicle") which is "falling apart," and has negotiated a deal for a brand new vehicle fo $20,000.00. Motion ¶ 1, Dckt. 38.

2. Debtor's Current Vehicle cannot idle steadily and has little power. "Debtor has no idea what is wrong with it." Debtor needs a new vehicle to get to work. The Current Vehicle is a "maintenance nightmare." *Id.,* ¶ 2.

3. The new vehicle is reasonably necessary for the maintenance and support of Debtor and her family. *Id.,* ¶ 3(a).

4. The present interest rate is the best Debtor can get. *Id.,* ¶ 3(d).

5. Debtor will trade her Current Vehicle in and provide a $3,500.00 down payment ($1,000 from her funds and $2,500 from her sister as a gift). *Id.,* ¶ 3(e).

6. Debtor will modify the plan to extend the term from 36 to 60 months so she can afford the payments. *Id.,* ¶ 3(g).

7. This hearing was set because the Trustee did not believe he could approve this financing. *Id.,* ¶ 4.

8. Debtor has shown that the new vehicle is reasonably necessary for her care and maintenance, and that the terms of the transaction are fair and reasonable affordable. *Id.,* ¶ 6.

In reviewing the request for order shortening time, the court also preliminarily reviewed the Motion. In granting shortened notice, the court noted that the interest rate on the credit sought was high, and that it is not explained why Debtor's sister was gifting $2,500.00 towards a car but not simply cosigning to allow for lower interest. Order, Dckt. 46.

Thereafter, Debtor filed another Declaration. Dckt. 47. This Declaration is not simply testimony, but actually an extension of argument in favor of the Motion and in rebuttal to the court's observations made in the Order Shortening Time.

The Declaration is four pages in length, but can be summarized as follows:

1. Debtor cannot get a better interest rate because she is in bankruptcy . . . " even outside of Bankruptcy, [Debtor] would not have been able to finance a vehicle for less than 17.99%."

2. Debtor looked into buying a 2013 Ford Focus, 2016 Chevy Impala, and a few other cars with mileage ranging from 25 to 50 thousand miles, but the proposed loan terms for those vehicles was less reasonable.

3. Debtor's sister is not in a position to be legally obligated on a new

vehicle loan. Debtor's sister gave Debtor $2,500.00 as an early graduation gift.

OCTOBER 1, 2019 HEARING

At the October 1st, 2019 hearing, the court continued the hearing on the motion. Civil Minutes, Dckt. 53.

DISCUSSION

The present Motion seeks permission for Debtor to purchase a brand new vehicle at a 17.99% interest rate.

The first issue to address is the necessity of the vehicle. It is unclear what is wrong with the Debtor's Current Vehicle. Debtor does not describe her efforts to repair the Current Vehicle. She actually admits she "has no idea what is wrong with it."

On Debtor's Schedule A/B, Debtor states under penalty of perjury that the Current Vehicle has 112,000 miles and is in "Good Condition." Dckt. 1.

The Current Vehicle was subject to the secured claim of Regional Acceptance Corporation. Debtor filed a Motion To Value that claim, asserting the Current Vehicle has a value of $7,000.00 at the time of filing, and the court granted that Motion on May 7, 2019. Dckts. 10, 27.

In her Declaration in support of the valuation, Debtor states the following:

> Although my car is not that old, it does have more than 100,000 miles on it, which greatly reduces its value. **The vehicle is in generally good condition**. **However, I have had some issues with the vehicle's cylinders**. **I have had to bring the vehicle into the shop a couple of times for that,** the most recent being just earlier this year. Although **Hyundai has been warranting the issue**, the issue appears to repeat itself frequently. The vehicle also needs new tires, which I estimate will cost around $400.

Declaration ¶ 7, Dckt. 12(emphasis added).

It is not clear whether the present issues with the Current Vehicle are the same as those being covered by warranty. However, Debtor lists a $250 monthly expense on Schedule J for transportation, and that expense is stated to include maintenance. Schedule J, Dckt. 1. Debtor has not stated what the cost is to be for the repairs to the Current Vehicle and whether they exceed the money allocated for maintenance.

While Debtor states 17.99% interest is the best rate she could get "because she is in bankruptcy," both the court and Debtor's counsel have seen much lower rates come through in bankruptcy cases on a regular basis.

Additionally, assuming the Current Vehicle does need to be replaced, it is unclear why Debtor and Debtor's counsel think it is reasonable to buy a new vehicle.

Debtor reports net income of $3243.75 a month. Schedule I, Dckt. 1. On Schedule J, Debtor lists expenses of $2,803.00–these expenses include expenses of four dependents, including a granddaughter (aged 8), grandson (aged 9), son (aged 27), and daughter (aged 33). Dckt. 1. However, it is clarified that the daughter "splits living expenses." *Id.*

In Debtor's Confirmed Plan, she makes a monthly payment of $440, which over 36 months pays 0 percent to unsecured claims totaling $118,425.00. Plan, Dckt. 3. Essentially, the Chapter 13 plan pays only the claim secured by Debtor's Current Vehicle, and the taxes owing to the Internal Revenue Service. *Id.*

In reviewing the claims in the official claims registry, the brunt of the unsecured debt ($71,009.16) is from student loans. Proof of Claim, No. 21.

In order to be able afford the new car, Debtor proposes extending the plan out from 36 to 60 months. Debtor filed a Supplemental Schedule J as Exhibit B to show estimated expenses. Dckt. 41. The Supplemental shows the estimated monthly payment is $460, and deceases Debtor's disposable income to $129.98. *Id.* However, no vehicle insurance expense is estimated, making it likely Debtor is going to have no disposable income.

The present Motion has brought in to question whether Debtor's Confirmed Plan was proposed in good faith. Debtor seems to be of the mind set that she can take on immense expenses, leaving creditors footing the bill.

Debtor is currently taking care of two adult dependents, one which has an unexplained illness. The other adult dependent is "splitting" expenses, but not contributing any income. It is not stated anywhere what income either adult dependent is receiving.

The other two dependents are the children of Debtor's daughter. From the Schedules it appears Debtor is covering all of their expenses–again with no word as to what income Debtor's daughter has and what if anything she is contributing.

Now, in the present Motion, Debtor seeks to incur further debt while paying unsecured claims nothing. Debtor is getting a brand new 2020 model vehicle with less than 5 miles.

It is unclear where the $1,000 for Debtor's down payment is coming from. While Debtor's disposable monthly income is stated to be $440, Debtor did list and fully exempt $6,000.00 in a checking account. Schedules A/B and C, Dckt. 1.

The Motion reads as though the down payment relies on a gift, stating as follows:

> Debtor will trade in my Hyundai and will provide a down payment of $3,500.
> Debtor will pay $1,000 her and the other $2,500 will be a gift from her sister.

Motion ¶ 3(e), Dckt. 38. However, Debtor's subsequent Declaration makes clear that the $2,500.00 was an early graduation gift already made to Debtor, and Debtor just happens to be using those funds. Declaration, Dckt. 47. Debtor does not explain why she does not simply make a very large down payment to get reasonable financing terms–having funds of at least $8,500.00 on hand.

In any case, the post-petition credit sought here is not reasonable, and is not in the best interest of the Debtor or the Estate.

The Motion is denied.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Incur Debt filed by Vicky Lou Saavedra ("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.

11. **19-24682-E-13 DPC-1** | **ONRICKA HENDERSON** **Peter Macaluso** | **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **9-3-19 [13]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney September 3, 2019. By the court's calculation, 28 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 debtor is delinquent $400.

Debtor is $400 delinquent in plan payments, which represents multiple months of the $100.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

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.

12. 19-24883-E-13 DPC-1 — DAVID EVANS — Stanley Berman — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK — 9-18-19 [39]

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 sustained.

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

A. Debtor failed to properly classify a Safe Credit Union claim.

B. Debtor failed to list expenses on Schedule J that he admitted to during

the Meeting of Creditors held on September 12, 2019.

C. Debtor failed to list two unsecured loans with Sierra Central Credit Union of over $30,000 that he admitted to during the Meeting of Creditors.

D. Debtor failed to identify in the appropriate schedule tax liability owed to the Internal Revenue Service for 2017.

E. Plan relies on two Motions to Avoid Liens of US Bank and Bank of America that were not yet decided at the time Debtor submitted the Plan.

DISCUSSION

Trustee's objections are well-taken.

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor has failed to make important disclosures regarding debts, namely over $30,000 in unsecured loans, expenses admitted to at the Meeting of Creditors, and unpaid taxes. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Furthermore, a review of Debtor's Plan shows that it relies on the court valuing the secured claims of Bank of America and US Bank. On October 6, 2019 this court granted Debtor's motion to avoid Bank of America's lien but denied Debtor's Motion to Avoid US Bank's lien. Because the US Bank lien remains, Debtor is likely to not have sufficient to pay the claim in full. This too goes to the crux of feasibility of Debtor's Plan.

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.

13. 18-20387-E-13 ERIC FERRARI MOTION TO MODIFY PLAN
JLK-1 James Keenan 8-26-19 [42]

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 August 26, 2019. By the court's calculation, 57 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is denied.

The debtor, Eric William Ferrari ("Debtor") seeks confirmation of the Modified Plan to provide for the increased claim amount of his priority debt. Declaration, Dckt. 44. The Modified Plan provides $700.00 per month through July 2019; $850.00 per month through June 2021; and $1,250.00 through January 2023; and a 0% dividend to unsecured claims totaling $141,365.00. Modified Plan, Dckt. 45. 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 September 30, 2019. Dckt. 48. Trustee opposes confirmation on the following grounds:

A. Debtor is delinquent $850.00 under the Confirmed Plan.

B. Debtor has not filed Supplemental Schedule I and J in support of the increased plan payments.

DISCUSSION

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). According to Trustee, Debtor has failed to make a plan payment of $850.00. But Trustee also points out that there was a transaction pending for $850.00. Unless, the transaction did not clear, there is no reason to believe that Debtor is delinquent. On the other hand, the Modified Plan proposes to increase plan payments and Trustee argues that Debtor should file Supplemental Schedule I and J in support of income and expenses. This court agrees with Trustee. Debtor should submit supplemental schedules before the plan can be confirmed. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Eric William Ferrari ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Motion to Confirm the Modified Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

14. **19-24893-E-13 DPC-1** **RHIANNON NICHOLS** **Ted Greene** **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 9-18-19 [19]**

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 sustained.

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

A. Debtor failed to attend the mandatory First Meeting of Creditors held on September 12, 2019.

DISCUSSION

Trustee's objection is 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 the Chapter 13 Trustee and any creditors who appear represents a failure to cooperate. *See* 11 U.S.C. § 521(a)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Because Debtor failed to attend at the scheduled meeting of creditors, 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.

15. 19-23295-B-13 MOH-1 — MICHAEL GAINZA, Michael Hays — MOTION TO CONFIRM PLAN, 8-22-19 [26]

CASE HAS BEEN ASSIGNED TO HON. CHRISTOPHER D. JAIME
ALL FUTURE HEARING SHALL BE SET TO HIS COURTROOM

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 August 22, 2019. By the court's calculation, 61 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).

The Motion to Confirm the Plan is denied.

The debtor, Michael A. Gainza ("Debtor") seeks confirmation of the Chapter 13 Plan. The Plan first proposes to use a lump sum Debtor alleges is owed to him as part of his retirement by his former employer Kaiser Permanente in the amount of $96,389.79 and a monthly $1,651.09. If this lump sum from Kaiser is not received, then the Plan provides for payments of $2,570.00 on October 25, 2019 and monthly thereafter in a 60 month plan to pay his ongoing mortgage of $1,651.09 and a monthly dividend of $496.15 on the mortgage arrearage.

Finally, the plan provides 100% dividend on unsecured claims totaling $0.00. Plan, Dckt. 28. 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 8, 2019. Dckt. 36. Trustee opposes confirmation on the following grounds:

A. Debtor fails to adequately provide for post-petition mortgage payments and or state when mortgage arrearage will be paid.

B. Debtor fails to provide specific details regarding the lump sum amount to be paid into the plan.

DISCUSSION

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). There is an uncertainty related to the lump sum discussed by Debtor that may prevent Debtor from complying with the values added to the proposed Plan. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Further, the Plan does not properly propose to cure arrearage related to post-petition mortgage payments. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearage.

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, Michael A. Gainza ("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.

FINAL RULINGS

16. **17-27906-E-13 MMM-1** | **PAMELA SPRING** **Mohammad Mokarram** | **CONTINUED MOTION TO MODIFY PLAN** **8-20-19 [45]**

Final Ruling: No appearance at the October 20, 2019 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 20, 2019. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is granted.

The debtor, Pamela Gaynell Spring ("Debtor") seeks confirmation of the Modified Plan to address increasing rent and transportation costs. Declaration, Dckt. 47. The Modified Plan provides for payments of $297.73 for the first 19 months and then $252.00 per month for the remaining 26 months. Modified Plan, Dckt. 49. 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 a Response on September 13, 2019. Dckt. 53. Trustee argues that the plan is confirmable so long as Debtor cures the delinquency of $48.87 (possibly by reducing the monthly payment by $3 each month of the plan term in the order confirming the plan). On October 19, Trustee filed a second response to inform the court that Debtor had cured the previous delinquency by making a $300.87 and for the court to take this into consideration.

DISCUSSION

The Trustee has confirmed that the default is resolved.

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, Pamela Gaynell Spring ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on August 20, 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.

17.	**14-32002-E-13 MJD-7**	**KAO SAECHAO AND MYHANH NGUYEN Matthew DeCaminada**	**MOTION FOR COMPENSATION BY THE LAW OFFICE OF STUTZ LAW OFFICE, P.C. FOR MATTHEW J. DECAMINADA, DEBTORS ATTORNEY(S) 9-4-19 [131]**

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 September 4, 2019. By the court's calculation, 48 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Allowance of Professional Fees is granted.

Matthew J. DeCaminada, the Attorney ("Applicant") for Kao Ching Saechao and Myhanh Thi Nguyen, the Chapter 13 Debtor ("Client"), makes a Request for the Additional Allowance of Fees and Expenses in this case.

Fees are requested for the period March 13, 2019, through September 4, 2019. Applicant requests fees in the amount of $2,000.00 and no costs.

APPLICABLE LAW

Statutory Basis For Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including–
>
> (A) the time spent on such services;
>
> (B) the rates charged for such services;
>
> (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
>
> (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
>
> (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
>
> (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

> (i) unnecessary duplication of services; or
> (ii) services that were not—
> (I) reasonably likely to benefit the debtor's estate;
> (II) necessary to the administration of the case.

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

Reasonable Fees

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

A. Were the services authorized?

B. Were the services necessary or beneficial to the administration of the

estate at the time they were rendered?

C. Are the services documented adequately?

D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?

E. Did the attorney exercise reasonable billing judgment?

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

Reasonable Billing Judgment

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

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

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

A review of the application shows that Applicant's for the Estate include substituting into the case, objecting to a claim, filing a third modified plan, resolving a motion to dismiss, and preparing a motion to incur debt. The court finds the services were beneficial to Client and the Estate and were reasonable.

"No-Look" Fees

In this District, the Local Rules provide consumer counsel in Chapter 13 cases with an election for the allowance of fees in connection with the services required in obtaining confirmation of a plan and the services related thereto through the debtor obtaining a discharge. Local Bankruptcy Rule 2016-1 provides, in pertinent part,

(a) Compensation. Compensation paid to attorneys for the representation of chapter 13 debtors shall be determined according to Subpart (c) of this Local Bankruptcy Rule, unless a party-in-interest objects or the attorney opts out of Subpart (c). The failure of an attorney to file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys, shall signify that the attorney has opted out of Subpart (c). When there is an objection or when an attorney opts out, compensation shall be determined in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017, and any other applicable authority."

. . .

(c) Fixed Fees Approved in Connection with Plan Confirmation. The Court will, as part of the chapter 13 plan confirmation process, approve fees of attorneys representing chapter 13 debtors provided they comply with the requirements to this Subpart.

(1) The maximum fee that may be charged is $4,000.00 in nonbusiness cases, and $6,000.00 in business cases.

(2) The attorney for the chapter 13 debtor must file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys.

(3) If the fee under this Subpart is not sufficient to fully and fairly compensate counsel for the legal services rendered in the case, the attorney may apply for additional fees. The fee permitted under this Subpart, however, is not a retainer that, once exhausted, automatically justifies a motion for additional fees. Generally, this fee will fairly compensate the debtor's attorney for all preconfirmation services and most postconfirmation services, such as reviewing the notice of filed claims, objecting to untimely claims, and modifying the plan to conform it to the claims filed. Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation. Form EDC 3-095, Application and Declaration RE: Additional Fees and Expenses in Chapter 13 Cases, may be used when seeking additional fees. The necessity for a hearing on the application shall be governed by Fed. R. Bankr. P. 2002(a)(6).

The Order Confirming the Chapter 13 Plan expressly provides that Client's counsel is allowed $4,000.00 in attorneys' fees, the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dckt. 30.

Lodestar Analysis

If Applicant believes that there has been substantial and unanticipated legal services that have been provided, then such additional fees may be requested as provided in Local Bankruptcy Rule 2016-1(c)(3). The attorney may file a fee application, and the court will consider the fees to be awarded pursuant to 11 U.S.C. §§ 329, 330, and 331. For bankruptcy cases in the Ninth Circuit, "the primary method" to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm,*

APLC v. Placide (In re Placide), 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves "multiplying the number of hours reasonably expended by a reasonable hourly rate." *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). "This calculation provides an objective basis on which to make an initial estimate of the value of a lawyer's services." *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). A compensation award based on the lodestar is a presumptively reasonable fee. *In re Manoa Fin. Co.*, 853 F.2d 687, 691 (9th Cir. 1988).

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

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Management: Applicant spent 2.4 hours in this category. Applicant filed a substitution of attorney, set up Debtor's file with the firm, and reviewed Debtor's documents filed by previous attorney.

Objection to Claim: Applicant spent 2.0 hours in this category. Applicant filed an Objection to Proof of Claim No.11 filed by Carrington College.

Motion to Dismiss: Applicant spent hours in this category. Applicant responded to the trustee's office directly resolving the motion to dismiss.

Motion to Confirm Third Modified Plan: Applicant spent 2.20 hours in this category. Applicant prepared, filed, and served a third modified plan.

Motion to Incur Debt Post-Petition: Applicant spent 2.00 hours in this category. Applicant prepared, filed, and served a motion to incur debt.

Application for Fees: Applicant spent 1.80 hours in this category. Applicant prepared, filed, and served this application for fees.

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Identified by Biller and Rate on Detailed Time Records Exhibit**
Matthew J. DeCaminada	6.3	$275.00	$1,732.50
Matthew J. DeCaminada	0.2	$0.00	$0.00
GL (an unidentified person or AI Program)	5.4	$175.00	$945.00
Total Fees Listed On Billing Records for Period of Application			$2,677.50
Fees Requested in Motion -Applicant Reducing Amount			$2,000.00

The Motion states that Applicant, personally, performed 11.90 of legal services for Debtor. No other person is mentioned and no other person is stated as providing the legal services. Only in reviewing the detailed time records Exhibit A (Dckt. 134) does the court discover that there is some other person or Artificial Intelligence program identified only as GL for whom 5.4 hours of time has been billed and for which compensation is sought. This is almost 50% of the hours which the Motion states that Applicant has done and billed for his services. GL (he/she/IT) is seeking to have $175 a hour for the time allocated to GL.

Based on the evidence as presented by Applicant, there is $1,787.50 (including the 0.2 hours which Applicant said he was billing at $0.00) in time that Applicant has provided legal services. This falls slightly short of $2,000 that Applicant is seeking. The court cannot merely assume that GL is someone who should be paid $175 an hour for services.

However, the court does determine the reasonableness of the services provided. It is reasonable that the fees for the legal services provided is $2,000.00. The court concludes that Applicant has delivered valuable legal services, which he has voluntarily reduced in amount in light of his client's ability to pay in this case. The court notes that Applicant has not sought to recover any expenses, and clearly some expenses have been incurred. [FN. 1]

FN. 1. Applicant should not assume that the court will conduct such an analysis and provide for fees when unidentified people/things/Artificial Intelligence are stuck in billing records.

Costs and Expenses

Applicant does not seek any costs or expenses.

FEES ALLOWED

Fees

The unique facts surrounding the case, including substituting into the case, objecting to a claim, filing a third modified plan, resolving a motion to dismiss, and preparing a motion to incur debt, raise substantial and unanticipated work for the benefit of the Estate, Debtor, and parties in interest. The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. The request for additional fees in the amount of $2,000.00 is approved pursuant to 11 U.S.C. § 330 and authorized to be paid by David Cusick ("the Chapter 13 Trustee") from the available funds of the Plan in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

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

Fees $2,000.00
pursuant to this Application as final fees pursuant to 11 U.S.C. § 330 in this case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Matthew J. DeCaminada ("Applicant"), Attorney having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Matthew J. DeCaminada is allowed the following fees and expenses as a professional of the Estate:
>
> Matthew J. DeCaminada, Professional Employed by Kao Ching Saechao and Myhanh Thi Nguyen ("Debtor")
>
> Fees in the amount of $2,000.00
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for Debtor.
>
> **IT IS FURTHER ORDERED** that David Cusick ("the Chapter 13 Trustee") is authorized to pay the fees allowed by this Order from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

18. **19-20026-E-13** **THOMAS IVERS** **MOTION BY LUCAS B. GARCIA TO**
LBG-4 **Lucas Garcia** **WITHDRAW AS ATTORNEY**
10-8-19 [119]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 8, 2019. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion to Withdraw as Attorney 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.

The hearing on the Motion to Withdraw as Attorney is continued to 1:30 p.m. on October 29, 2019.

Lucas Garcia ("Movant"), counsel of record for Thomas James Ivers ("Debtor"), filed a Motion to Withdraw as Attorney as Debtor's counsel in the bankruptcy case. Movant states the following:

A. The Motion is brought pursuant to California Rule of Professional Conduct 3-700(A) through 3-700(C).

B. Counsel cannot effectively represent Debtor due to inconsistency of and lack of communication.

C. Debtor and Counsel disagree as to the progress and prosecution of the bankruptcy case.

D. Debtor has accused Counsel of engaging in fraud related to the sale of a property.

E. Counsel contends the relationship between Debtor and Counsel has deteriorated irreparably as a result of Debtor's threats, harassment, and accusations.

Motion, Dckt. 119.

APPLICABLE LAW

District Court Rule 182(d) governs the withdrawal of counsel. LOCAL BANKR. R. 1001-1(C). The District Court Rule prohibits the withdrawal of counsel leaving a party *in propria persona* unless by motion noticed upon the client and all other parties who have appeared in the case. E.D. CAL. LOCAL R. 182(d). The attorney must provide an affidavit stating the current or last known address or addresses of the client and efforts made to notify the client of the motion to withdraw. *Id.* Leave to withdraw may be granted subject to such appropriate conditions as the Court deems fit. *Id.*

Withdrawal is only proper if the client's interest will not be unduly prejudiced or delayed. The court may consider the following factors to determine if withdrawal is appropriate: (1) the reasons why the withdrawal is sought; (2) the prejudice withdrawal may cause to other litigants; (3) the harm withdrawal might cause to the administration of justice; and (4) the degree to which withdrawal will delay the resolution of the case. *Williams v. Troehler*, No. 1:08cv01523 OWW GSA, 2010 U.S. Dist. LEXIS 69757 (E.D. Cal. June 23, 2010). FN.1.

FN.1. While the decision in *Williams v. Troehler* is a District Court case and concerns Eastern District Court Local Rule 182(d), the language in 182(d) is identical to Local Bankruptcy Rule 2017-1.

It is unethical for an attorney to abandon a client or withdraw at a critical point and thereby prejudice the client's case. *Ramirez v. Sturdevant*, 26 Cal. Rptr. 2d 554 (Cal. Ct. App. 1994). An attorney is prohibited from withdrawing until appropriate steps have been taken to avoid reasonably foreseeable prejudice to the rights of the client. *Id.* at 559.

The District Court Rules incorporate the relevant provisions of the Rules of Professional Conduct of the State Bar of California ("Rules of Professional Conduct"). E.D. CAL. LOCAL R. 180(e).

Termination of the attorney-client relationship under the Rules of Professional Conduct is governed by Rule 3-700. Counsel may not seek to withdraw from employment until Counsel takes steps reasonably foreseeable to avoid prejudice to the rights of the client. CAL. R. PROF'L CONDUCT 3-700(A)(2). The Rules of Professional Conduct establish two categories for withdrawal of Counsel: either Mandatory Withdrawal or Permissive Withdrawal.

Mandatory Withdrawal is limited to situations where Counsel (1) knows or should know that the client's behavior is taken without probable cause and for the purpose of harassing or maliciously injuring any person and (2) knows or should know that continued employment will result in violation of the Rules of Professional Conduct or the California State Bar Act. CAL. R. PROF'L CONDUCT 3-700(B).

Permissive withdrawal is limited to certain situations, including the one relevant for this Motion:

(1) The client

> (d) by other conduct renders it unreasonably difficult for the member to carry out the employment effectively.

CAL. R. PROF'L. CONDUCT 1.16(b)(4)(d).

DISCUSSION

As a ground for the Motion to Withdraw as Attorney, Movant states that Debtor has not communicated with him or signed necessary documents. But more importantly, Debtor has accused Movant of fraudulent behavior regarding to the sale of property. Movant states in his declaration:

> "Upon my arrival the debtor came into the hallway and stated that he had come across information that he believes there is a conspiracy to defraud him. When pressed he stated that he believes that Kristy Hernandez is central to a conspiracy to commit fraud. [. . .] I informed him that I have no connection to Trinity (the buyer) and that I have only had professional connection to Kristy Hernandez. He said that I was part of the conspiracy for my part in getting Kristy Hernandez appointed."

Declaration, Dckt. 121.

Movant does not discuss any prejudice that withdrawal as a counsel will or will not cause or harm it might or might not have on administration of justice. Movant states that at a previous hearing in front of Judge Klein, he had asked the court for permission to withdraw but that it was denied in favor of requesting such action through formal channels. Dckt. 119. Further, Movant states that Debtor has "received enough warning to adequately prepare himself for this action and to not be surprise by this action." Dckt. 119.

Furthermore, under California Rule of Professional Conduct 3-700(C)(1)(d), Debtor's conduct, such as accusing Movant of fraud and failing to respond to communications from the Movant, is hindering Movant's ability to carry out his employment and duties effectively. Those are sufficient reasons for permissive withdrawal.

The court continues the hearing to insure that all parties in interest, including the Debtor are present in court for the hearing, as well as to afford the U.S. Trustee the opportunity to review this file and the various allegations and provide insightful input to this case and these proceedings.

19. 16-24973-B-13 MARTIN/ANNETTE SNEZEK MOTION TO MODIFY PLAN
SLE-4 Steele Lanphier 9-4-19 [107]

Final Ruling: No appearance at the October 20, 2019 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 4, 2019. By the court's calculation, 48 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The hearing on this Motion to Confirm the Modified Plan has been renoticed for hearing at 10:00 a.m. on October 22, 2019, in Courtroom 32, the Hon. Robert S. Bardwil presiding. Russell Greer has been substituted in as the Chapter 13 Trustee, with such cases being heard by Judge Bardwil.

The debtors, Martin John Snezek, II and Annette Jane Snezek ("Debtor") seek confirmation of the Modified Plan because they have recently been forced to move and rental prices are higher than they expected with a likely increase of $700. Declaration, Dckt. 110. The Modified Plan provides $31,471.00 to be paid through July 2019 and $181.00 monthly payments from September 2019 until plan completion (for a total of 60 months), and a "5(c)" percent dividend to unsecured claims totaling $68,626.25. Modified Plan, Dckt. 111. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, Jan P. Johnson ("Trustee") filed an Opposition on September 20, 2019. Dckt. 113. Trustee opposes on the grounds that the Modified Plan proposes to pay a 5% dividend to unsecured claim. Under the Confirmed Plan Trustee had already disbursed a total of 12.023% to the unsecured claims and that Trustee would face an administrative burden in attempting to recover the

funds already disbursed. Trustee added that there would be no opposition if Debtor instead included language stating that unsecured claims shall receive no less than 12.023%.

DISCUSSION

The Chapter 13 Trustee argues that the modified plan encounters issues of administrability due to previously dividend disbursements. The Trustee does not provide any analysis of what the correct hybrid minimum unsecured dividend should be.

Debtor has not filed a response or offered an analysis addressing this point whereby the already paid dividend is well in excess of the new amount to be proposed. The Debtor has not taken advantage of this opportunity to state the correct minimum dividend amount.

20. 18-26184-E-13 MS-3 | **OLEG/SOMMER ZHURKO** | **Mark Shmorgan** | **MOTION TO MODIFY PLAN** | **9-3-19 [51]**

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

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

Sufficient Notice Not Provided. The Proof of Service states that service was made May 28, 2019. This is obviously incorrect. Possibly a used proof of service from a previous motion. Therefore, the court has not been presented with any evidence of service.

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 debtors, Oleg Zhurko and Sommer Zhurko ("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. 59. 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, Oleg Zhurko and Sommer Zhurko ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on September 3, 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.

21. **19-23562-E-13 SJT-1** **SHERAZ/TERRA KHAN** **Susan Turner** **MOTION TO CONFIRM PLAN 8-22-19 [22]**

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 August 21, 2019. By the court's calculation, 62 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.

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtors, Sheraz Ahmed Khan and Terra Elaine Khan ("Debtor") have provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response indicating non-opposition on September 13, 2019. Dckt. 31. 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 debtors, Sheraz Ahmed Khan and Terra Elaine Khan ("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 22, 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.

22. **19-25568-E-13 SDH-1** | **SHANNON GENZEL** **Scott Hughes** | **FINAL HEARING RE: MOTION TO IMPOSE AUTOMATIC STAY 9-4-19 [8]**

Final Ruling: No appearance at the October 20, 2019 Hearing is required.

Local Rule 9014-1(f)(3) Motion—No Final 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 4, 2019. The court set the hearing for September 10, 2019. Dckt. 13.

The court required personal service upon the trustee conducting the foreclosure sale by September 6, 2019.

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

No Opposition was filed for the final hearing.

The Motion to Impose the Automatic Stay is granted.

Shannon Eugena Genzel ("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. 18-20134 and 18-27137) were dismissed on September 20, 2018, and August 8, 2019, respectively. *See* Order, Bankr. E.D. Cal. No. 18-20134 , Dckt. 28, August 8, 2019,; Order, Bankr. E.D. Cal. No. 18-27137, Dckt. 41. 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.

ORDER SHORTENING TIME AND INITIAL HEARING RE IMPOSING INTERIM STAY

The Trustee filed a response to Debtor's Motion to Impose Stay on October 8, 2019 where he requests this court consider that Debtor filed a supplemental declaration regarding Debtor's return to work and mother's contribution of up to $1,000.00 a month but that Debtor has failed to submit an amended or supplemental Schedules I and J in support of the motion. Dckt. 26. On September 15, 2019, the court issued an order extending the stay on an interim basis through November 5, 2019. Dckt. 21.

On September 5, 2019, the court issued an Order shortening time and imposing an interim stay pending resolution of this Motion at the hearing. Dckt. 13. The Order, noting concerns about

whether this case was filed in good faith, made the following findings:

Debtor Shannon Genzel (Debtor) commenced this Chapter 13 case on September 4, 2019. She is represented by counsel in this case, the same counsel who represented her in her prior two Chapter 13 bankruptcy cases which were pending and dismissed within the one year of the filing of the current case. A summary of the Debtor's two prior cases is summarized below:

Chapter 13 Case 18-27137

Filed.....November 13, 2018

Dismissed.....August 8, 2019

Chapter 13 Plan Confirmed.....January 22, 2019. 18©27137, Dckt. 32

Monthly Plan Payment.....$1,914.00. Id., Plan ¶ 2.01.

Motion to Dismiss filed June 28, 2019. Id., Dckt. 38

Monetary Default.....$3,826.00
Plan Payments Made by Debtor.....$1,914.00 (one month)

Chapter 13 Case 18-20134

Filed.....January 9, 2018

Dismissed.....September 20, 2018

Chapter 13 Plan Confirmed.....March 19, 2018. 18-20134, Dckt. 32

Monthly Plan Payment.....$1,580.00. Id., Plan ¶ 2.01.

Motion to Dismiss filed June 28, 2019. Id., Dckt. 38

Monetary Default.....$3,160.00

Plan Payments Made by Debtor.....$3,225.76 (two months)

A review of these cases shows that Debtor has made three plan payments during the seventeen (17) months of being in, and having the protections of the Bankruptcy Code, her prior two Chapter 13 cases.

The present Ex Parte Motion (which improperly combines a request for order shortening time and to impose the stay prior to hearing) states the following grounds with particularity for the multiple relief requested:

"4. The home lender in this case will foreclose on September 13, 2019 unless this court imposes a stay at a hearing on September 10, 2019."

"5. Debtor therefor is asking the court to enter an emergency stay that would remain in effect for the entire case. If needed, the stay could be imposed temporarily for the first 60 days of this case pending a continued hearing on the motion."

"7. The debtor is asking that the stay be imposed in this case against all creditors pending the hearing on the motion to impose a stay for the entire length of the case."

"8. The notice of motion and motion to impose a stay are being filed and served today and should be on the docket for the court to review along with the debtor's plan to pay creditors 100 percent of their claims."

Motion, with the quotations identified by Motion paragraph number, Dckt. 8.

A review of the above grounds stated with particularity (Fed. R. Bankr. P. 9013) do not provide the court with any grounds for imposing the automatic stay in light of the multiple prior defaults and there being only three payments made during the seventeen (17) months of the prior bankruptcy case.

Going to the Declaration of Debtor filed in support of the Motion, it appears to provide testimony as to facts other than those stated as grounds in the Motion. The Debtor's testimony includes:

"4. The change of circumstances is as follows: I lost my last job in December of 2018. I appealed the decision because it was a state government job."

"5. I was awarded some bereavement pay because my partner died in November of 2018."

"6. They hired me back but then laid me off again and I have not had any income since about April of 2019."

"7. I was offered a new job by the California Department of Transportation on September 3, 2019. I will be making at least $3,068 a month and there is a possibility I could be making more in the near future. I start my new job on September 16, 2019 and should have a pay check in time to make the first plan payment due on October 25, 2019."

"8. I also obtained a tuition waiver from my son's private Jesuit school. That is a $410.00 monthly expense they agreed to waive because of the unemployment. I have applied to have that extended through December 2019, but even if it is not extended, I believe that I can still afford the new payments because they are lower than in the last case. The payments are lower because all of the debts were overstated in the last case including the arrears on both mortgages."

"9. The last case did not work because I lost my job. Now that I have a new job, I can afford to make the plan payments and keep my home. I filed this bankruptcy on September 4, 2019 because there is a foreclosure sale set for September 13, 2019 and I did not want to lose the equity to a foreclosure."

"10. There has been a significant change since the last case. I have new employment. I would like the opportunity to keep the house and save the equity."

Declaration, with the quotations identified by Declaration paragraph number, Dckt. 11. The Declaration discusses some "facts" which are not set forth as grounds upon which the relief is requested.

There is another document filed with the court which is identified as "Exhibit." Dckt. 10. It actually is titled "Motion to Impose Stay." In this second Motion, the "grounds stated with particularity" merely repeat the summary conclusion as stated in the Ex Parte Motion that the stay should be imposed. No other grounds, such as those which would related to the testimony in the Declaration, are asserted as the basis for why relief should be granted.

On Schedules A/B and D Debtor list having only a 50% interest in the Aizenberg Circle Property and that it is subject to a deed of trust securing debt of ($118,309.73). Dckt. 1 at 12, 20. Debtor states that her 50% interest in this property has a value of $337,000.

When Debtor filed her bankruptcy case on January 9, 2018, she stated on Schedules A/B and D that her 50% interest in the above property had a value of $265,000 and was subject to a first deed of trust securing an obligation of ($121,038.00) and a second deed of trust securing an obligation of ($75,759). 18-20134, Dckt. 1 at 11, 19-20.

On Schedule I, the 50% co-owner of the Property, Debtor's mother, is listed as living in the house with the Debtor and contributing $1,000.00 a month of her Social Security benefits as income for Debtor. Dckt. 1 at 29. Debtor states that she has $2,668.00 a month in income after her taxes and Social Security withholding of ($400) a month, and an additional $1,000 for her mother's Social Security benefits. Id.

In looking at Schedule J Debtor lists having only ($1,952) a month for herself and her teenage child. Id. at 30-31. Debtor lists having $0.00 for home maintenance and repairs for the Property that she has been filing bankruptcy to stop the foreclosure sale. Debtor lists only ($175) a month for gas, vehicle maintenance, and repairs. Id. at 31. On Schedule A/B Debtor lists owning a 2006 Honda Civic with 190,000 miles on it. At this age, it is not unlikely that this vehicle requires significant repairs and maintenance. Assuming ($75) a month for maintenance and repairs (which is only ($900) a year, which could be less than a new set of tires), that leave only ($100) a month for gas. That give Debtor $25 a week for gas. At $3.35 a gallon for gas, Debtor could purchase only forty-three

(43) gallons of gas a month. That averages seven and one-half gallons a week. Assuming an average of 25 miles per gallon, debtor would be able to drive only 26 miles per day.

The proposed Chapter 13 Plan requires monthly plan payments of ($1,715.00). Dckt. 7. For Class 1, there is the holding of a first deed of trust with monthly payments of ($798.94) and a monthly arrearage payment of ($216.66). Plan ¶ 3.07, Dckt. 7.

The proposed Chapter 13 Plan discloses that there is another secured obligation to be paid. That is a USAA, FBS obligation that is secured by a second deed of trust. Id. The currently monthly payment on this obligation is stated to be ($286.24) and a monthly arrearage payment of ($33). *Id.*

These mortgage payments total ($1,334.84) a month (including arrearage payment). This is fifty percent (50 %) of Debtor's actual state monthly take-home income of $2,668.00 (not including using the mother's Social Security benefits).

Granting of Interim Stay and Expedited Initial Hearing

As shown above, the court has reservations about the Debtor's ability to perform a Chapter 13 Plan, especially one that will take five years. Plan ¶ 2.03, Dckt. 7.

Taken at face value, Debtor and her mother have a substantial equity in the Property they are trying to save from foreclosure. Given Debtor's income, even if the past defaults were caused by a job loss, it appears highly doubtful that Debtor can perform a plan for five years. The expenses on Schedule J do not appear reasonable for a five year period (especially in light of Debtor driving a fourteen model year old vehicle with 190,000 miles on it).

Rather it appears that Debtor's strategy is one likely to result in the loss of the Property to foreclosure and the lost of exempt equity for Debtor and Debtor's mother.

Conspicuously absent is any testimony from Debtor's mother. Not only about her ability to give up her $1,000 a month Social Security benefit to try and fund the plan, but as to why she has not and is not making her share of the mortgage payment. Possibly it is intended that giving up her Social Security benefit is intended to be for that amount. However, Debtor's Mother is living in the house, so the question arises as to what other household expenses she should be paying.

11 U.S.C. Section 362(c)(4)(B) allows the court to impose the stay provided in 11 U.S.C. Section 362(a) if the debtor demonstrates that the case then before the court has been filed in "good faith." The burden is on the Debtor to overcome the presumption of bad faith arising from the multiple cases dismissed in the one year preceding the then pending case. Though it appears questionable

> that the Debtor can prosecute a plan, there is, based on Debtor's statement of value, a significant equity to be salvaged, the court concludes that for purposes of imposing an Interim Stay and conducting further hearings, and only those limited purposes at this time, the presumption has been nudged over the rebuttal line.
>
> Notwithstanding these shortcoming, the court imposes the stay on an interim basis to afford Debtor the opportunity to explain how a plan would appear to be feasible or how she and her mother will save their exempt equity in the Property through a commercially reasonable sale of the Property. Debtor's counsel can also address the evidence to be presented concerning possible feasibility, which includes the reasonableness of the expenses listed on Schedule J.
>
> It appears that the two creditors with secured claim have a sufficient equity cushion, which would erode Debtor's and her mother's homestead exemptions by the delay. This is not a "free stay" for Debtor and her mother.

Order, Dckt. 13.

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 AND FINAL HEARING

In supplemental pleadings the Trustee points out that the Debtor needs to file amended or supplemental pleadings to address her changed finances. While it does not appear that has been done yet, the Debtor and her counsel know that the stakes are high. Failure to diligently prosecute this case will have significant consequences for both.

The Motion is granted and the automatic stay imposed on an interim basis pursuant to 11 U.S.C. § 362(c)(4) (B) is made permanent and is in full force and effect until terminated by further order of this court or operation of law for all purposes and persons.

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 Shannon Eugena Genzel ("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 imposed in this case by prior orders of the court pursuant to 11 U.S.C. § 362(c)(4) (B) is made permanent and is in full force and effect for all purposes and persons**.** until terminated by further order of this court or operation of law.

23. **19-25057-E-13 PGM-3** **ARACELY RIVAS** **Peter Macaluso** **MOTION TO VALUE COLLATERAL OF TITLEMAX OF CALIFORNIA, INC. 9-18-19 [24]**

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, 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 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 TitleMax of California, Inc. ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $3,210.00.

The Motion filed by Aracely Rivas ("Debtor") to value the secured claim of TitleMax of California, Inc. ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 26. Debtor is the owner of a 2012 Chevrolet Equinox ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $3,210.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

DISCUSSION

The lien on the Vehicle's title secures a loan incurred on October 27, 2017, which is less than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $9,351.01. Proof of Claim, No. 1. Under 11 U.S.C. § 1325(a)(9) the lien cannot be removed if the collateral was purchased within the "910-day preceding the date of the filing of the petition" if the collateral was a motor vehicle purchased for personal use.

Debtor's Declaration provides factual detail as to the condition of the Vehicle, including high mileage, the need for a new transmission, fact that three windows need to be replaced because the car was broken into, its need for a fuel service, and its need of the 100,000 mile maintenance. Dckt. 26. Debtor's testimony is substantial evidence that has rebut the presumption of validity as to the Proof of Claim. *In re Austin,* 583 B.R. 480, 483 (B.A.P. 8th Cir. 2018).

Additionally, the evidence presented establishes that this was not a purchase money security interest. The lien was given on the vehicle already owned by the Debtor to obtain new credit. The loan was to secure a debt owed to Creditor with a balance of approximately $9,351.01. Proof of Claim, No. 1.

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 $3,210.00, 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 Aracely Rivas ("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 TitleMax of California, Inc. ("Creditor") secured by an asset described as 2012 Chevrolet Equinox ("Vehicle") is determined to be a secured claim in the amount of $3,210.00, 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 $3,210.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

24. **19-20125-E-13** **ROBERT/DONNA DECELLE** **MOTION TO CONFIRM PLAN**
PGM-5 **Peter Macaluso** **9-15-19 [103]**

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 15, 2019. By the court's calculation, 37 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.

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtors, Robert and Donna DeCelle ("Debtor") have provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"),filed a Non-Opposition on October 4, 2019. Dckt. 110. 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 debtors, Robert and Donna DeCelle ("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 15, 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.

25. **19-24783-E-13 DPC-1** **DENISE WATSON** **Pro Se** **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 9-18-19 [21]**

DEBTOR DISMISSED: 09/27/19

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

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

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

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

26. **18-26913-B-13** **ROBERT SIMMONS** **MOTION TO MODIFY PLAN**
MOH-3 **Michael Hays** **8-26-19 [74]**

CASE HAS BEEN ASSIGNED TO HON. CHRISTOPHER D. JAIME
ALL FURTHER HEARINGS SHALL BE SET
TO JAIME'S CALENDAR.

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 August 26, 2019. By the court's calculation, 57 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Robert G. Simmons ("Debtor") having been presented to the court, and

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

IT IS ORDERED that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on August 26, 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.

27. **19-24755-E-13** **HOWARD REDMOND** **OBJECTION TO CONFIRMATION OF**
DPC-2 **Pro Se** **PLAN BY DAVID P. CUSICK**
9-18-19 [25]

WITHDRAWN BY M.P.
DEBTOR DISMISSED: 09/27/19

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

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

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

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

28. **19-25057-E-13 PGM-2** **13 thru 14** **ARACELY RIVAS** **MOTION TO VALUE COLLATERAL OF WELLS FARGO BANK, N.A. 9-18-19 [19]**

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

The Motion to Value Collateral and Secured Claim of Wells Fargo Bank N.A. ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $5,000.00.

The Motion filed by Aracely Rivas ("Debtor") to value the secured claim of Wells Fargo Bank N.A. ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 21. Debtor is the owner of a 2015 Kia Rio ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $5,000.00 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).

Proof of Claim, No. 5, was filed by Creditor on October 2, 2019. The Proof of Claim asserts a secured claim in the amount of $7,125.00.

On September 30, 2019, David Cusick, the Chapter 13 Trustee ("Trustee"), filed a non-opposition to the motion. Response, Dckt. 29.

DISCUSSION

Debtor's Declaration provides factual detail as to the condition of the Vehicle, including high mileage, the need for a catalytic converter, tire wear, and brake wear. Dckt. 19. Debtor's testimony is substantial evidence that has rebut the presumption of validity as to the Proof of Claim. *In re Austin,* 583 B.R. 480, 483 (B.A.P. 8th Cir. 2018).

The lien on the Vehicle's title secures a purchase-money loan incurred on February 9, 2016, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $14,037.79. 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 $5,000.00, 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 Aracely Rivas ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Wells Fargo Bank N.A., ("Creditor") secured by an asset described as 2015 Kia Rio ("Vehicle") is determined to be a secured claim in the amount of $5,000.00, 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 $5,000.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

29. 18-23358-E-13 DEF-3 MATTHEW/TARA HANNAH David Foyil MOTION TO CONFIRM PLAN 8-7-19 [87]

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 August 7, 2019. By the court's calculation, 76 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.

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtors, Matthew and Tara Hannah ("Debtor") have provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on October 7, 2019. Dckt. 97. 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 debtors, Matthew and Tara Hannah ("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 7, 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.

30. **19-24860-E-13 DPC-1** **GERALD/BARBARA MILLER** **Steele Lanphier** **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **9-18-19 [26]**

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

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

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors and Debtor's Attorney on September 18, 2019. By the court's calculation, 34 days' notice was provided. 42 days' notice is required. FED. R. BANKR. P. 2002(b); LOCAL BANKR. R. 3015-1(d)(1).

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Subsequent to the filing of this Objection, Debtor filed an Amended Plan and corresponding Motion to Confirm on September 19, 2019. Dckts. 47-57. Filing a new plan is a *de facto* withdrawal of the pending plan. The Objection is sustained, and the plan is not confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Confirmation the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is sustained, and the proposed Chapter 13 Plan is not confirmed.

31. **19-24860-E-13 JHW-1** | **GERALD/BARBARA MILLER** **Steele Lanphier** | **OBJECTION TO CONFIRMATION OF PLAN BY TD AUTO FINANCE LLC 8-22-19 [19]**

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 Debtors, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on August 22, 2019. By the court's calculation, 61 days' notice was provided. 42 days' notice is required. FED. R. BANKR. P. 2002(b); LOCAL BANKR. R. 3015-1(d)(1).

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Subsequent to the filing of this Objection, Debtor filed an Amended Plan and corresponding Motion to Confirm on September 19, 2019. Dckts. 47-57. Filing a new plan is a *de facto* withdrawal of the pending plan. The Objection is sustained, and the plan is not confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Confirmation the Chapter 13 Plan filed by TD Auto Finance LLC, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is sustained, and the proposed Chapter 13 Plan is not confirmed.

32. **19-25877-E-13** **SHANITA JEFFERSON** **MOTION TO VALUE COLLATERAL OF**
TLA-1 **Thomas Amberg** **ELITE ACCEPTANCE CORP.**
9-23-19 [10]

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, and Office of the United States Trustee on September 23, 2019. By the court's calculation, 29 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 Elite Acceptance Corp. ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $10,500.00.

The Motion filed by Shanita Lorain Jefferson ("Debtor") to value the secured claim of Elite Acceptance Corp. ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 12. Debtor is the owner of a 2015 Nissan Altima ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $10,500.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The Creditor has not filed a proof of claim to date.

The David Cusick, the Chapter 13 Trustee ("Trustee") does not object to this motion.

DISCUSSION

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

which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $13,078.00. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of $13,078.00, 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.

Debtor, as the owner of the vehicle, states her opinion as to value, concluding that it is $10,500.00. Declaration, Dckt. 12. 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 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 Shanita Lorain Jefferson ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Elite Acceptance Corp. ("Creditor") secured by an asset described as 2015 Nissan Altima ("Vehicle") is determined to be a secured claim in the amount of $10,500.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $10,500.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

33. 19-23781-E-13 BB-3 | **VERLIN JOHNSON** | **MOTION TO VALUE COLLATERAL OF MEMBERS FIRST CREDIT UNION**
Bonnie Baker | **9-16-19 [42]**

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, and Office of the United States Trustee on September 16, 2019. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

The Motion to Value Collateral and Secured Claim has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). 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 Members First Credit Union ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $8,866.00.

The Motion filed by Verlin K. Johnson ("Debtor") to value the secured claim of Members First Credit Union ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 44. Debtor is the owner of a 2014 Chrysler 200 ("Vehicle"). Proof of Claim No. 3. Debtor seeks to value the Vehicle at a replacement value of $8,866.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

DISCUSSION

Debtor's Declaration states "I believe and asserts [sic] that the reasonable, fair market value of the 2015 Chrysler is $8,866.00 as shown in the Kelly Blue Book Guide." Dec., Dckt. 44, at ¶¶ 2- 4. Debtor's Declaration presents a mere conclusion, not supported by financial information or factual arguments. *In re Austin,* 583 B.R. at p. 483. Debtor fails to authenticate the Kelly Blue Book report as required by FED. R. EVID. 901 and has not provided an explanation as to why the report is excepted or

exempted from FED. R. EVID. 901. Further, Debtor provides a Kelly Blue Book Report for a 2015 Chrysler 200 but pursuant to the sale documents attached to Creditor's Proof of Claim, the car is a 2014 Chrysler 200. Proof of Claim 3.

However, Debtor's does provide his bear, naked owner opinion of value. That is sufficient evidence in light of the Creditor failing to provide any counter evidence. [FN. 1.]

FN. 1. It is surprising that a consumer represented by experienced counsel would not have a recognized trade or industry report such as the Kelly Blue Book valuation properly authenticated (who obtained it from the website and "printed it out." This is a wobbler, with the court giving the Debtor the benefit of the doubt. The court could read the declaration to state that Debtor has no opinion of value, but merely will sign whatever document his attorney puts in front of him so long as his attorney says, "Hey You WIN!!!!"

The next time, it may be that based on such lack of testimony and failure to authenticate the court will determine the value to be as stated in the proof of claim - which for this Contested Matter it would have been more than $11,000!!!!

The lien on the Vehicle's title secures a purchase-money loan incurred on July 17, 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 $11,322.81. Declaration, Dckt. 12. The value of the collateral securing the claim is $8,866.00. Therefore, Creditor's secured claim is determined to be in the amount of $8,866.00, the value of the collateral. *See* 11 U.S.C. § 506(a), with the balance an unsecured claim. 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 Verlin K. Johnson ("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 Members First Credit Union ("Creditor") secured by an asset described as 2014 Chrysler 200 ("Vehicle") is determined to be a secured claim in the amount of $8,866.00, 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 $8,866.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.