

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

**Honorable Ronald H. Sargis**  
**Chief Bankruptcy Judge**  
**Sacramento, California**

**October 29, 2019 at 3:00 p.m.**

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1.	<a href="#"><u>19-25202</u></a> -E-13 <a href="#"><u>AP-1</u></a> 1 thru 2	<b>JACQUELINE NIXON</b> <b>Allan Frumkin</b>	<b>OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK NATIONAL ASSOCIATION</b> 9-30-19 <a href="#"><u>[22]</u></a>
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**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on September 30, 2019. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

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<b>The Objection to Confirmation of Plan is sustained.</b>
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U.S. Bank National Association ("Creditor") holding a secured claim opposes confirmation

of the Plan on the basis that:

- A. Debtor does not provide to cure for the full amount in pre-petition arrearage of \$14,405.33

## **DISCUSSION**

Creditor's objections are well-taken.

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts \$14,405.33 in pre-petition arrearages. The Debtor listed the pre-petition arrears as \$8,330.16. This is a discrepancy of \$6,075.17. The Plan proposes to pay \$138.84 per month for 60 months on its pre-petition arrears. The Plan also proposes ongoing post-petition payments in the amount of \$694.18. 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.

Further, the Plan is not feasible because in order to compensate for the discrepancy explained above, Debtor will need to increase her plan payments. Debtor's Schedule J indicate that the Debtor has disposable income of \$1,572.52 per month, all of which she proposes to apply to the Plan. As the necessary payment Plan to cover Creditor's claim will exceed her disposable income, Debtor lacks sufficient income with which to fund the 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 U.S. Bank National Association ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on October 3, 3019. By the court's calculation, 26 days' notice was provided. 21 days' notice is required.

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

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

- A. Debtor is delinquent in the amount of \$1,606.36.
- B. Debtor failed to appear at 341 meeting.
- C. Debtor did not provide their last filed federal income tax return or any pay advices.
- C. Debtor fails to provide for curing arrearage on a secured creditor claim.
- D. Debtor provides to pay a secured claim substantially more interest than required to the detriment of unsecured claims who are not paid in full.

## DISCUSSION

Trustee's objections are well-taken. Overall, Debtor's Plan has severe feasibility issues.

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). The Plan is not feasible because Debtor has failed to make plan payments, provide important petition related documents and failed to attend the mandatory meeting of creditors. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Debtor is \$1,606.36 delinquent in plan payments, which represents one month of the \$1,606.36 plan payment. Before the hearing, another plan payment will be due. According to Trustee, the Plan in § 2.01 calls for payments to be received by Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Debtor did not 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 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). Also, 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 all necessary pay stubs and has failed to provide the tax transcript. Those are independent grounds to deny confirmation. 11 U.S.C. § 1325(a)(1).

Trustee directs the court's attention to Creditor U.S. Bank, N.A. objection based on the pre-petition amount owed by Debtor. Creditor has filed a timely proof of claim in which it asserts \$14,405.33 in pre-petition arrearages. The Plan does not propose to cure those arrearages. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearages.

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

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

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

The Objection to the Chapter 13 Plan filed by 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.

3. [19-24911](#)-E-13      **LAWRENCE MCNAMEE**      **OBJECTION TO CONFIRMATION OF**  
[JHW-1](#)      **Joseph Canning**      **PLAN BY FORD MOTOR CREDIT**  
3 thru 4           **COMPANY LLC**  
9-12-19 [18](#)

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on September 12, 2019. By the court's calculation, 45 days' notice was provided. 21 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing -----  
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<p><b>The Objection to Confirmation of Plan is overruled.</b></p>
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Ford Motor Credit Company LLC ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

- A. Debtor's proposed Plan fails to provide for the present value of Creditor's secured claim by failing to provide the proper "formula" discount rate.
- B. Debtor incorrectly classified Creditor's interest on the proposed Plan.

## DISCUSSION

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 5.25%. Creditor's claim is secured by a 2016 Ford Mustang, VIN ending in #6887 ("Vehicle"). 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)).

In this bankruptcy case, the additional risk factors to support the requested 7.25% interest rate are summarized by the court as follows:

- A. Debtor projects having disposable income of \$9,288.00. By putting all of the projected disposable income into the Chapter 13 Plan as required by the Bankruptcy Code thus renders no cushion for an extra expenses. (Thus, Creditor treats compliance with the Bankruptcy Code as a risk factor.) Creditor does not provide an analysis of whether the expenses are appropriate and the Debtor has the ability to flex amounts between categories, such as reducing the monthly food expense and increase something else, or whether the expenses are unrealistically understated.
- B. The Bankruptcy Plan, as expressly permitted under the Bankruptcy Code extends the payment in full almost thirty-six months past the original contract date.

Beginning with the latter, no allegations are made as to any further depreciation of the vehicle, its current value, and whether the additional time to pay puts Creditor at any additional risk. Nothing is alleged as to the value of the collateral dropping below what is owed as this debt is paid down.

As to the former, the stated conclusion that Debtor complying with the Bankruptcy Code is a compensable "risk" for higher interest is not, in and of itself, sufficient. Presumably, if Creditor could have pointed to how and why Debtor's expenses were unreasonably low and did not properly provide adequate amounts for real life "bumps in the road" (such as a new set of tires as opposed to losing a job or hospitalization for a life threatening illness), Creditor would have presented that to the court.

Proof of Claim No. 13 filed by Ford Motor Credit is for (\$27,189.83), of which (\$26,825.00) is stated as secured (presumably the retail value of the vehicle as provided in 11 U.S.C. § 506(a)) and the unsecured portion is (\$364.83). The contract interest rate is 5.99%. Jennifer Wang, Esq., outside counsel for Creditor signed Proof of Claim No. 13 for Creditor, does not indicate in Proof of Claim 13 how she concluded that the vehicle has a retail value of \$26,825.00. No Kelly Blue Book or NADA report of value is attached. The Contract for purchase of the vehicle states that the cash price of the vehicle was \$36,165.00. It appears (though the "fine print" of the contract is illegible) that \$2,495 of the contract price was for a service contract, which would indicate additional protection for Creditor since Debtor will not have to pay for the routine servicing of the vehicle, helping to insure in maintaining good condition of the vehicle.

In looking at the Amended Schedules I and J, Debtor lists \$17,520.00 a month in net income from his business. Amended Schedule I, Dckt. 24 at 23-34. On Amended Schedule J Debtor lists a family unit of three - a child and a fiancé. *Id.* at 26. No income is shown for Debtor's fiancé. For expenses, Debtor lists making a support payment of (\$2,000) and a "marital settlement payoff" of (\$4,000) a month, which is 73% of his total monthly expenses of (\$8,232.00). Though this is something that a court might find interesting as part of a creditor's objection, here Creditor did not deem the information valuable enough to present to the court, so the court will not second guess that decision of Creditor.

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. Creditor, while stating an objection, has only identified risk factors common to every bankruptcy case - it will take longer to get paid then provided under the contract. The court fixes the interest rate as the prime rate in effect at the commencement of the case, 5.25%, plus a 1.25% risk adjustment, for a 6.50% interest rate. The objection to confirmation of the Plan on this basis is sustained. *See* 11 U.S.C. § 1325(a)(5)(B)(ii).

Further, Creditor argues that Debtor incorrectly classified Creditor's claim. Creditor's argument is well taken. Debtor must amend the Plan to provide for a "Yes" as Creditor holds a purchase money security interest on the Vehicle.

### **Payment of Pre-Confirmation Amounts**

The Plan provides for Creditor's claim to be fully amortized over the life of the Plan. Creditor is correct and it should be paid pre-confirmation on its secured claim for this purchase money security interest. Though overruling the Objection, the court orders the Trustee to immediately disburse the monies provided for in Class 2 of the Plan to Creditor.

The Objection is overruled.

### **Possible Objection Grounds Not Raised**

Proof of Claim No. 13 asserts a secured claim in the amount of (\$26,825.00). Such Proof of Claim is *prima facie* evidence of the value thereof. No order valuing Creditor's secured claim for any other amount pursuant to 11 U.S.C. § 506(a) has been obtained by Debtor. As expressly provided in Paragraph 3.02 of the Plan, it is Creditor's proof of claim that determines the amount of the secured claim, unless the court has issued an order determining something different.

A secured claim of (\$26,825.00) amortized over sixty months with interest computed at 6.25% per annum, requires a monthly plan dividend for that claim of \$521.73. This proposed Plan only provides for a dividend of \$311.75, well short of the amount that has to be paid. While the Plan provides for a 52% dividend to creditors holding general unsecured claim, which amount could conceivably be reduced by the Debtor, as the plan is now written, it appears that there is insufficient monies to properly fund the \$521.73 monthly payment.

No analysis is provided whether at the existing funding there is more than enough to cover the additional amount on this Claim and still make the 52% dividend on unsecured claims. In light of the Parties not finding this to be a significant economic issue and given the substantial monthly payment, it is not obvious to the court and the court will not waste time and resources for such an analysis when

the Creditor has determined it not to be worth the effort.

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 Ford Motor Credit Company LLC (“Creditor”) holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

**IT IS FURTHER ORDERED** that the Chapter 13 Trustee shall immediately (at or before the time of the next regular monthly disbursement to creditors in this case) disburse to Creditor all monies provided for it under the Chapter 13 Plan (Dckt. 11) for Creditor’s Class 2 claim.



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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on September 26, 2019. By the court's calculation, 33 days' notice was provided. 14 days' notice is required.

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

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

Solano First Federal Credit Union ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

- A. Debtor lists understated arrearage in the proposed Plan.
- B. Debtor fails to provide an accurate representation of income and business entities.
- C. Debtor's current bankruptcy proceeding and Plan were not filed in good faith due to the two (2) prior dismissed bankruptcies.

Additionally, Trustee filed a Response to Creditor's Objection on October 15, 2019. Dckt. 33. Trustee requests that the court take into consideration Creditor's objections and that Debtor should address the issues addressed by the Creditor.

## DISCUSSION

Creditor's objections are well-taken.

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts \$41,554.35 in pre-petition arrearages. The Plan does not propose to cure those arrearage. The Plan proposes to pay Creditor only \$35,302.91. Debtor can not unilaterally modify Creditor's claim. 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 may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Creditor also noticed a discrepancy in Debtor's Schedules regarding the names and income related to Debtor's business entities. Debtor first filed Schedules listing him as the owner of McNamee, Inc with a disposable monthly of \$9,288.00. In the Amended Schedule recently submitted, Debtor lists him as the owner of Fiber Communications with an income of \$8,568.00. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Further, Creditor argues that neither Debtor's current bankruptcy proceeding nor the proposed Plan were filed in good faith and that Debtor fails to rebut the presumption of bad faith that accompanies prior unsuccessful bankruptcy filings. Creditor contends that Debtor continues to file bankruptcies in an effort to stall Creditor's foreclosure over Debtor's property.

This is Debtor's third bankruptcy proceeding in the last year. The first two bankruptcies were dismissed on August 9, 2018 and December 12, 2018, respectively. Case Nos. 18-24302 and 18-27093. Both were dismissed for failure to file petition related information and documents. Creditor's argument is valid and thus an additional ground for not confirming the Plan until Debtor overcomes the presumption of bad faith and shows that he is serious about the current filing.

Debtor has not responded to this Objection.

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

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

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

The Objection to the Chapter 13 Plan filed by Solano First Federal Credit Union ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney, on September 24, 2019. By the court's calculation, 35 days' notice was provided. 14 days' notice is required.

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

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

- A. Debtor is in material default because the Plan will complete in more than sixty months.
- B. Plan fails to provide for priority claim from the Internal Revenue Service.
- C. Plan relies on a pending motion to value collateral.
- D. Plan provides to pay for arrearage that may not need to be paid under the applicable provisions.
- E. There is a possible unfair discrimination to unsecured claims due to

excessive interest payments to three Class 2 Creditors.

F. Debtors are serial filers, having filed 31 prior bankruptcy cases.

## DISCUSSION

Trustee's objections are well-taken.

Trustee alleges that the Plan is not feasible. 11 U.S.C. § 1325(a)(6). Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. The Plan calls for payments of \$3,364.95 for 60 months, with 0% to unsecured creditors. According to Trustee's calculations, the Plan will complete in approximately 73 months which exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d). Thus, the Plan may not be confirmed.

Trustee asserts that the Internal Revenue Service has a claim for \$108,000.00 in secured debt, \$66,717.61 in priority unsecured debt, and \$83,884.63 in general unsecured debt. Proof of Claim 6, filed on September 4, 2019. The Plan does not provide for all priority debt as required by 11 U.S.C. § 1322(a)(2).

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of GM Financial, which was set for hearing on October 1, 2019. This Motion to Value was not granted, thus, Debtors' Plan does not have sufficient monies to pay the claim in full. With the court denying the valuation, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

Debtors' Plan proposes to pay 8% interest on arrearage to Polycomp Trust Company in Class 1. According to the Trustee, this creditor may not be entitled to interest under 11 U.S.C. § 1322(e). Thus, Debtors' Plan may not comply with applicable provisions of 11 U.S.C. § 1325(a)(1).

Trustee asserts that Debtors' Disclosure of Compensation of Attorney improperly excludes from the fees charged in this case the following services: judicial lien avoidances and relief from stay actions. This is in direct contradiction to Local Rule 2017-1 (a)(1) - Scope of Representation in Bankruptcy Cases and Proceedings, which states that an attorney who is retained to represent a debtor in a bankruptcy proceeding constitutes an appearance for all purposes including judicial lien avoidances and relief from stay actions. (See also Rights and Responsibilities of Chapter 13 Debtors and their Attorneys).

Trustee also opposes confirmation due to possible unfair discrimination to unsecured claims under 11 U.S.C. § 1322(b)(1). Debtors' Plan proposes to pay, what Trustee argues is excessive interest to three Class 2 Creditors: Global Lending Services (17.00%), Westlake Financial Service (21.00%), and GM Financial (14.15%). Trustee contends that the proposed interest is in excess of that required by law under *Till v. SCS Credit Corp.*, 541 U.S. 465, 301 F.3d 583 (2004), and, in turn, Debtors fail to pay unsecured claim what they should receive based on Debtors' projected expenses.

Lastly, there is an implication of bad faith in the current proceeding. Trustee contends that Debtors are serial filers, having filed 31 prior bankruptcy cases, spanning from 1997 to the current case. In the last 7 years, Debtors have filed six (6) bankruptcy proceedings, including this one. Moreover, the United States Trustee has filed 2 adversary proceedings from injunctive relief. The first one ended up with a four (4) year bar from filing for Karen Gingold, which lasted until January 23, 2013. The second

adversary case ended up with a four year ban from filing against Stephen Gingold.

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee and Office of the United States Trustee on September 18, 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 denied.**

The debtors, Kimberli Beth Heck and David Keith Heck, Jr. ("Debtors") seek confirmation of the Modified Plan because there has been a change in circumstances based on unanticipated expenses, new tax liabilities and Debtor Kimberli Heck's pay increased of \$250.00 per month. Declaration, Dckt. 68. The Modified Plan provides that Debtors will pay \$70,230 into the Plan through month 15, and a monthly plan payment in the amount of \$6,129.00 for months 16 through 60, and a 51 percent dividend to unsecured claims totaling \$96,382.48. Modified Plan, Dckt. 69. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

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

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on October 11, 2019. Dckt. 73.

## **DISCUSSION**

Debtors are 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 65 months. Trustee states that approximately \$292,712.52 including Trustee fees and proposed Class 5 claims

remain to be paid through the plan after deducting the balance on hand of approximately \$7,892.02. Thus, \$295,712.52 divided by \$6,129.00 equals 49 months. As the debtors have completed 16 months through September 2019, the term will be 65 months. The monthly plan payment would need to be approximately \$6,725.00 in order for it to be completed timely. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

Moreover, Trustee points out that Debtor includes post-petition tax claims for the Internal revenue Service and the Franchise Tax Board for the year 2018 totaling \$9,550 in Debtors' Proposed Plan. The Trustee contends he cannot pay these amounts without a claim being submitted or a specific order of the court.

As an additional note, Trustee also points out that the Modified Plan's Proof of Service does not indicate the agencies were served properly per the Roster of Governmental Agencies. However, both The Franchise Tax Board and the Internal Revenue Service filed their claims (claim 11-1 and 12-1) on October 16, 2019. However, the Internal Revenue Service was not served with the present Motion at the required addresses stated on the Roster of Governmental agencies.

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

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtors, Kimberli Beth Heck and David Keith Heck, Jr. ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on September 24, 2019. By the court's calculation, 35 days' notice was provided. 14 days' notice is required.

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

- A. There is confusion as to who represent Debtor., and in turn, the Attorney of record improperly excluded services that cannot be excluded per local rules.
- B. Debtor failed to list all assets on Schedule B.

Debtor filed a Response to Trustee's Opposition on October 23, 2019. Dckt. 17.

## DISCUSSION

Trustee's objections are well-taken.

Trustee argues that there is confusion as to who represents Debtor in these bankruptcy



proceedings. “Luke Garcia” with a firm name of “Law Office of Luke Garcia” is listed as Debtor’s Counsel of record on Debtor’s Petition, the Rights and Responsibilities form, and the Attorney Disclosure Compensation form. However, the Statement of Financial Affairs reflects a \$2,150 to “Law Office of Stephen Johnson.” Trustee wants to verify how much Debtor’s Counsel is owed in this matter and will oppose fees unless provided a copy of the Attorney Fee Agreement.

Here, Debtor’s Counsel accepts responsibility for the discrepancy and explains that the name issue occurred as a result of using a home computer than with the wrong law firm designation information. Debtor’s Response requests that Debtor be allowed to file amended forms to correct this error.

Trustee has an additional ground for objecting based on Counsel’s improperly excluded services as stated on Line 6 of Debtor’s Disclosure of Compensation of Attorney. Under Local Rule 2017-1(a)(1) – Scope of Representation in Bankruptcy Cases and Proceedings, an attorney who is retained for bankruptcy proceedings must appear for all purposes including motions to avoid lien, motions for relief from automatic stay, and others.

Trustee also objects to confirmation of the plan on the grounds that not all assets are listed. Debtor testified at the Meeting of Creditors that she owns approximately 50 birds and 2 cats but that these are not listed on Schedule B. Debtor also addresses this issue in the Response and requests that Debtor be allowed to file amended forms reflecting the information shared at the meeting of creditors.

The Plan complies 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 Motion to Confirm the Modified Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

**IT IS FURTHER ORDERED** that Debtor is allowed to file amended forms to cure the errors and defects raised by Trustee and listed by Debtor’s Counsel under their Response.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor (*pro se*) on September 24, 2019. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

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

- A. Debtor failed to provide important petition documents;
- B. Debtor failed to attend the mandatory meeting of creditors;
- C. Debtor filed the wrong plan form;
- D. Debtor failed to provide information related to real estate and assets;
- E. Debtor claimed non-applicable federal exemptions; and
- F. Debtor is a serial filer.

## DISCUSSION

Trustee's objections are well-taken. The history and issues related to the current bankruptcy alert this court to the overall lack of feasibility in this case.

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C.

§ 1325(a)(6).

Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Appearance is mandatory. *See* 11 U.S.C. § 343. Attempting to confirm a plan while failing to appear and be questioned by 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 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 or a written statement that no such documentation exists. That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Trustee argues that the Plan is based upon a plan form that is no longer effective now that the court has adopted a new plan form as of December 1, 2017. The Plan is based on a prior plan form, a Plan labeled Official Form 113 Chapter 13 Plan, which is a violation of Federal Rule of Bankruptcy Procedure 3015.1 and General Order 17-03.

Lastly, Trustee argues that Debtor is a serial filer. Since 2005 Debtor has filed six (6) bankruptcy cases. Debtor's non-filing spouse, Virgil Leroy Evans, has filed five (5) bankruptcy cases since 2016, with an order barring Mr. Evans from filing another bankruptcy case for a 2-year period.

The most recent prior bankruptcy case filed by the Debtor addresses the prior filings in the Order dismissing that case and imposing a bar on filing. 17-26013; Order, Dckt. 186. The court's ruling in issuing the bar is summarized as follows:

- A. The Chapter 7 case was dismissed with prejudice. *Id.*; Order, p. 1:11-13, Dckt. 186.
- B. The refiling of bankruptcy by Debtor was barred for one year from the entry (June 7, 2018) of the Order. *Id.*, 1:14-16.
- C. The court discussed the case being the "third non-productive case that debtor has filed since 2015," and provides a summary of the cases. *Id.*, p.1:18-28, 2:1-1.5.
- D. The court references an order issued granting relief from the stay and the court finding that Debtor had engaged in "a scheme to delay, hinder, or defraud secured creditor Wells Fargo Bank, N.A., and that the debtor had not filed her bankruptcy petition in this case in good faith. Dckt. 84." *Id.*, p. 2:2.5-6.5.

The court also issued sanctions against Debtor's counsel for his conduct in representing Debtor in bankruptcy cases filed in the Eastern, Northern, and Southern Districts of California. *Id.*; Memorandum Decision, Dckt. 197. The Decision identifies eight different properties in which the Debtor and other persons who filed bankruptcy cases asserted interests in the eight properties. *Id.*, p.

5:12-24, 6:1-14. For these properties and persons filing bankruptcy, the court identified twenty-five (25) separate cases. *Id.* Counsel for the Debtor confirmed that he was counsel for all of the debtors in the twenty-five bankruptcy cases in which interests were asserted in the eight properties. *Id.*, p. 6:14.5-19.5.

The court then barred Debtor's counsel from filing any new bankruptcy cases or adversary proceedings in the Eastern District of California until he completed ten hours of continuing legal education. *Id.*, 9:2-11, and Order, Dckt. 198.

The court states that "each of the above-referenced bankruptcy cases were non-productive," and then discusses several specific cases. *Id.*, p. 6:20.5-28+, 7:1-5.5. The court then discusses why the court concludes that Debtor's counsel offered "no reasonable explanation for his conduct in this case [Debtor's case]" and that Debtor's counsel,

[f]ails to adequately explain or justify the other bankruptcy cases that he filed in other districts throughout California and in which the other debtors he represented in those bankruptcy cases also claimed fractionalized interests in the same property in which the debtor in this case also claimed similar fractional interests.

*Id.*, p. 6:6.5-12.5.

The court concluded that Debtor's counsel was "aiding debtors in an abuse of the bankruptcy process that is calculated to hinder, delay, and defraud lenders in their efforts to foreclose and/or exercise their rights under applicable non-bankruptcy law with regard to their respective real property collateral." *Id.*, p. 8:11-16.

As stated by the Trustee, the Debtor has not in this case used the Plan adopted in this District as required by the Federal Rules of Bankruptcy Procedure. In looking at the Plan filed, it requires a monthly plan payment of \$250.00 for thirty-six (36) months. Dckt. 14. It does not provide for paying any claims.

On Schedule D in this case Debtor checks the box that she has not creditors with secured claims, but then lists two creditors with secured claims, but does not state the asserted amount of the claim, does not identify the collateral, and does not state whether the obligations for which the two are listed are disputed. Dckt. 12 at 15. On Schedule E/F Debtor lists a \$300,000 student loan creditor and a \$3,000 tax claim - both of which are stated to be "contingent." *Id.* at 17.

On Schedule I, Debtor states that her only income is \$1,682 in Social Security benefits, stating that she is disabled. *Id.* at 25-26. On Schedule J Debtor then lists monthly expenses of (\$4,558). *Id.* at 27-29. Based on the income and expenses stated under penalty of perjury, there is no projected disposable income to fund a plan. On the Statement of Financial Affairs Debtor states under penalty of perjury that she has had no employment or business income during the current or two prior years, as well as not having any other income (such as Social Security benefits) during the current or two prior years. Statement of Financial Affairs Questions, 4-5. *Id.* at 31.

The Trustee's Objection to Confirmation is sustained. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Plan is not confirmed.

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, and Office of the United States Trustee on September 10, 2019. By the court's calculation, 48 days' notice was provided. 28 days' notice is required.

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

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<p><b>The Objection to Confirmation of Plan is sustained.</b></p>
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Deutsche Bank National Trust Company ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

- A. Debtor lists Creditor's secured claim but fails to provide for payment of said claim in the plan.
- B. Debtor's Plan does not propose to cure arrearage owed to Creditor in the amount of \$112,374.25.
- C. Debtor failed to provide her monthly net income on Schedules submitted to with application.

## DISCUSSION

Creditor's objections are well-taken.

Creditor asserts a claim of \$360,696.67 in this case, including arrearage in the amount of \$112,374.25. Debtor's Schedule D lists Creditor name but provides no information as to the amount of the claim or the arrearage required.

Creditor alleges that the Plan is not feasible and violates 11 U.S.C. § 1322(b)(2) because it contains no provision for payment of Creditor's matured obligation, which is secured by Debtor's residence. *See* 11 U.S.C. § 1325(a)(6).

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

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

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

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

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

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

Notwithstanding the absence of a requirement in 11 U.S.C. § 1322(a) that a plan provide for a secured claim, the fact that this Plan does not provide for respondent Creditor's secured claim raises

doubts about the Plan's feasibility. *See* 11 U.S.C. § 1325(a)(6). That is reason to sustain the Objection.

Lastly, the objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts \$112,374.25 in pre-petition arrearages. The Plan does not propose to cure those arrearages. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearages.

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

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

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

The Objection to the Chapter 13 Plan filed by Deutsche Bank National Trust Company ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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



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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on July 2, 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).

<b>The Motion to Confirm the Modified Plan is denied.</b>
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The debtor, Robert James Rodni ("Debtor") seeks confirmation of the Modified Plan to cure payment delinquencies caused by unexpected expenses, and to provide for direct payment on the mortgage. Declaration, Dckt. 69. The Modified Plan provides for payments of \$2,201.12 for 18 months, 315 for 42 months, and an 8 percent dividend to unsecured claims totaling \$44,765.00. Modified Plan, Dckt. 71. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

#### CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on July 30, 2019. Dckt. 73. Trustee opposes confirmation on the following grounds:

1. The Plan calls for the claim of Wells Fargo Home Mortgage/Specialized Loan Servicing LLC to be paid as a Class 4. However, given the existence of pre- and post-petition arrearages, Trustee does not believe Debtor is capable of making payments without supervision.
2. The proposed plan is not signed by Debtor's attorney.

3. Debtor indicates constant vehicle maintenance is necessary, but only increased the Vehicle expense \$150. Furthermore, Debtor states he incurred expenses related to the discharge of a firearm but has not listed those expenses.

## **DEBTOR'S DECLARATION**

Debtor filed an additional Declaration on August 6, 2019. Dckt. 76. Debtor testifies that the repair done to his Vehicle was brake replacements which have been completed; that he anticipates no expenses from disarming a firearm; and making mortgage payments through the plan will make the payments more difficult due to added expense.

## **AUGUST 13, 2019 HEARING**

At the August 13, 2019 hearing, the court continued the hearing to allow Debtor additional time to file proposed amendments. Civil Minutes, Dckt. 77.

## **DISCUSSION**

Debtor has not filed any additional amendments since the prior hearing.

Trustee argues that based on the case history, and the existence of pre- and post-petition arrearages on Debtor's mortgage, Debtor is not capable of making the monthly payments directly as a Class 4. Debtor argues he cannot make the payments with the added expense.

This argument can be made by every debtor - paying the trustee fees (approximately 7%) on the defaulted, delinquent mortgage payment and the current payment is an expense of the Debtor in seeking the extraordinary relief under the Bankruptcy Code. Debtor has a demonstrated history of choosing or having to pay other debts with his mortgage payment and just letting the mortgage payment "slide."

It appears that the trustee's fees on the arrearage payment would be \$15 a month and for the current monthly payment \$134. Under the plan now before the court, Debtor strips down his plan payments to a mere \$315 a month for forty-two (42) months. Plan, Additional Provisions, Dckt. 71. This artificially stated necessary plan payment to restructure Debtor's delinquent obligation is one in which Debtor seeks to evade the cost of bankruptcy and shift to all other debtors in the Eastern District of California the costs of the Chapter 13 Trustee in administering Debtor's case. Possibly, Debtor is attempting to construct a negative economic incentive for the Chapter 13 Trustee, believing that the Trustee will look the other way since Debtor has made his case a "money losing proposition."

The above provision is not presented in good faith and demonstrates that the Debtor is not prosecuting this plan and case.

In looking at Supplemental Schedules I and J, Debtor states that he has monthly income, after taxes, of \$3,942. Dckt. 70 at 3. Debtor seeks to spend fifty percent (50%) of his monthly income just for the current mortgage payment. To do this, Supplemental Schedule J shows stripped down, unrealistic expenses which indicate that Debtor's plan is not feasible. *Id.* at 5.

Additionally, Debtor has not addressed Trustee's argument that the Second Modified Plan has not been signed by Debtor's counsel.

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

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

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

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

**IT IS ORDERED** that the Motion is denied.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney, on October 2, 2019. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

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

- A. Debtor cannot afford to make payments or comply with the plan because it relies on two Motions to Value Collateral which were set for hearing on October 22, 2019. If the motions to value are not granted, Debtor's plan does not have sufficient funds to pay the claims in full.

## DISCUSSION

Trustee's objections are based on two Motions to Value Collateral which were set for hearing on October 22, 2019.

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of two creditors: TitleMax of California, Inc. and Wells Fargo Bank. Debtor filed both motions on September 18, 2019. Dckt. 19 and 24.

On October 22, 2019, the court ruled on each motion. Indeed, Trustee filed two Non-Oppositions to the motions. Dckt. 29 and 31. The court granted both motions. The Motion to Value Collateral of Title Max was granted and the secured claim was valued at \$3,210.00. The Motion to Value Collateral of Title Max was granted and the secured claim was valued at \$5,000.00. This resolves the Trustee's Objection, the valuations consistent with these two claims as provided in the Chapter 13 Plan.

The Chapter 13 Plan complies with 11 U.S.C. §§ 1325 and 1322, and the Objection is overruled. The Chapter 13 Plan is confirmed.

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

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

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

**IT IS ORDERED** that the Objection is overruled, and Aracely Rivas ("Debtor") Chapter 13 Plan filed on August 12, 2019, is confirmed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on September 19, 2019. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

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

**The hearing on the Motion to Value Collateral and Secured Claim of Travis Credit Union's ("Creditor") has been continued to xxxxx, 2019, at 3:00 p.m. to allow additional time for creditor's inspection of the Vehicle as discovery in this Contested Matter.**

The Motion filed by Gerald William Miller and Barbara Miller ("Debtor") to value the secured claim of Travis Credit Union ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 46. Debtor is the owner of a 2016 Dodge Ram 1500 ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$17,500 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

#### **TRUSTEE'S NON-OPPOSITION**

Trustee David Cusick, ("the Chapter 13 Trustee") filed a Response to Debtor's Motion on October 15, 2019. Dckt. 69. The Chapter 13 Trustee does not oppose Debtor's valuation, he indicates that the court should take into consideration Creditor's request to inspect the vehicle before the court rules on the motion. Dckt. 69.

## **CREDITOR'S OPPOSITION**

Creditor filed an Opposition to Debtor's Motion to Value on October 3, 2019. Dckt. 59. Creditor indicates that the replacement value of the collateral, on the date the petition was filed was \$26,490.00, and requests an opportunity to inspect the vehicle before the court rules on the present Motion.

## **DEBTOR'S REPLY**

Debtor file a Reply to Creditor's Opposition on October 23, 2019. Dckt. 71. Debtor argues Creditor's evidence is hearsay and therefore inadmissible but Debtor's valuation is based on personal knowledge of the Vehicle and thus is admissible. Debtor argues Creditor should not be allowed to inspect the vehicle because unreasonable delay on the Creditor's behalf will prejudice Debtor.

## **DISCUSSION**

The lien on the Vehicle's title secures a purchase-money loan incurred on July 23, 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 \$28,880.58. Declaration, Dckt. 46.

Debtor's assertion that Creditor has not provided any evidence is not well-taken. Creditor's Kelly Blue Book Report has been properly authenticated and is accepted as a market report or commercial publication generally relied on by the public or by persons in the automobile sale business. FED. R. EVID. 803(17). Creditor could choose to stand on that, allowing the court to make adjustments for the alleged value lowering points stated by Debtor in the Declaration.

However, Debtor has stated in its Declaration several defects which are not reflected in the Kelly Blue Book Report, that are:

- A. Large Dent on the Driver's Side Door
- B. Cracked Windshield
- C. Stained Upholstery

In its Opposition, Creditor does not dispute the existence of any of the above damage. Dckt. 29. But requests an opportunity to inspect the Vehicle, not knowing whether such conditions exist.

Debtor's assertion that Creditor should be barred discovery in this Contested Matter and that the court should cut off discovery for a matter that is being heard forty days after being filed is not well founded.

In the Declaration, Debtor states that the Kelly Blue Book valuation range is \$21,408 and \$25,885. Declaration, ¶ 4, Dckt. 46. The Kelly Blue Book value provided by Creditor does not state the range of value as one is accustomed to seeing on the KBB website, but only a single retail value of \$26,490. Dckt 61 at 2. Thus, that would appear to be the higher end, showroom ready, car lot retail sales price.

Based on the evidence submitted to date, taking the testified damage into account and the general condition of a debtor's vehicle, the court would determine the value to be \$22,470.00.

However, the court determines a continuance to allow creditor an opportunity to inspect the Vehicle is required. Creditor request to inspect the vehicle is reasonable given the decrease in value the Debtor is asserting.

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 Gerald William Miller and Barbara Miller (“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 Creditor’s request for an inspection is granted.

**IT IS FURTHER ORDERED** that the Motion is continued to **xxxxx**, 2019, to allow for Creditor to inspect the Vehicle.



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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 19, 2019. By the court's calculation, 40 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

**The hearing on the Motion to Confirm the Amended Plan is continued to ~~XXXXXX~~, 2019.**

The debtors, Gerald William Miller and Barbara Miller ("Debtor"), seek confirmation of the Amended Plan. The Amended Plan provides for \$54,600 paid through the 60 month plan term. Amended Plan, Dckt. 51. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

## CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on October 11, 2019. Dckt. 64. The Trustee does not oppose Debtor's plan for the mortgage that includes a trial loan modification granted on October 1, 2019. Trustee does oppose the plan because Debtor cannot afford the plan. The plan is contingent on two Motions to Value. Trustee argues, if the both Motions to Value are not granted, the Debtors cannot pay for the plan payments.

## DISCUSSION

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of TD Auto Finance as well as one for Travis Credit Union. Debtor has filed the Motion to Value the Secured Claim of TD Auto Finance as well as one for Travis Credit Union, however the Motions have not been concluded. Without the

court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

The court continues the hearing on this Motion so that it trails with the motions to value.

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, Gerald William Miller and Barbara Miller (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the hearing on the Motion to Confirm the Amended Plan is continued to **3:00 p.m. on xxxxxxxxx, 2019**.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor (*pro se*) on October 1, 2019. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

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

- A. Debtor failed to file the correct plan form, filed an incomplete Statement of Financial Affairs, and the schedules are uncertain regarding dependents.
- B. Debtor failed to list a Creditor that was discovered during the Meeting of Creditors.
- C. Debtor listed over-exempted assets.
- D. Debtor failed to provide 521 documents.
- E. Debtor has failed to proposed payments not has he paid any funds into 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). The Plan is not feasible for the following reasons: Debtor filed the wrong plan form; listed three over exempted assets under Schedule C; failed to list Creditor Loan Mart on Schedule D; Debtor's expenses exceed income by over \$2,000.00; the Statement of Financial Affairs is incomplete; and there is uncertainty regarding dependents. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Debtor's plan fails the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). Trustee states that Debtor's non-exempt equity totals \$72,315.09 and the Debtor has not proposed any dividend to unsecured creditors.

Moreover, Debtor failed to provide 521 documents. 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). Also, 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 all necessary pay stubs and has failed to provide the tax transcript. Further, Debtor to provide proof of social security number. Those are independent grounds to deny confirmation. 11 U.S.C. § 1325(a)(1).

Finally, Trustee asserts that the Plan is not feasible on the basis that the Debtor filed this case on August 7, 2019 and the Plan does not propose any payments, nor has Debtor paid any funds into Plan. Thus, the Plan may not be confirmed.

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors,, and Office of the United States Trustee on September 24, 2019. By the court's calculation, 35 days' notice was provided. 42 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, George Manhai Francis ("Debtor") seeks confirmation of the Chapter 13 Plan. The Plan provides payments of \$3,045.00 for 60 months, and a 7% percent dividend to unsecured claims totaling \$57,718.00 . Plan, Dckt. 22. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

#### CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on October 17, 2019. Dckt. 30.

#### DISCUSSION

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).

The Chapter 13 Trustee asserts that Debtor is \$3,045.00 delinquent in plan payments, which represents one month of the \$3,045.00 plan payment. The Debtor has paid \$0.00 into the Plan to date. 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).

The Chapter 13 Trustee asserts that the Internal Revenue Service has a claim for \$14,138.10 in priority unsecured debt. Proof of Claim 3-1, filed on October 8, 2019. The Plan does not provide for all priority debt as required by 11 U.S.C. § 1322(a)(2).

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

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

11 U.S.C. §§ 521(e)(2)(A)(i), 704(a)(3), 1106(a)(3), 1302(b)(1), 1302(c); FED. R. BANKR. P. 4002(b)(2) & (3). Debtor is required to submit those documents and cooperate with the Chapter 13 Trustee. 11 U.S.C. § 521(a)(3). Debtor provided 2017 tax returns, but failed to provide 2018. Without Debtor submitting all required documents, the court and the Chapter 13 Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325.

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, George Manhai Francis (“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.

16. [15-27472-E-13](#) **RIGOBERTO/FELIX**  
[DPC-2](#) **RODRIGUEZ**  
25 thru 26 **Peter Macaluso**

**OBJECTION TO CLAIM OF ROBERT V.  
RUSSO, ESQ., CLAIM NUMBER 18-1  
9-12-19 [\[104\]](#)**

**Tentative Ruling:** The Object to 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.**  
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Local Rule 3007-1 Objection to Claim—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Debtor (*pro se*), Debtor's Attorney, and Office of the United States Trustee on September 12, 2019. By the court's calculation, 47 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

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

**The Objection to Proof of Claim Number 18-1 of Robert V. Russo, Esq. is sustained, and the claim is disallowed in its entirety.**

David Cusick, the Chapter 13 Trustee, ("Objector") requests that the court disallow the claim of Robert V. Russo ("Creditor"), Proof of Claim No. 18-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be in the amount of \$12,303.72. Objector asserts that The claim was filed

untimely without any documentation to support the claim and the amount appears to low to be based on the adversary complaint against Debtor filed during the prior Chapter 7.

This Proof of Claim was not filed by Robert V. Russo, but by the Debtor in 2019, four years into this bankruptcy case.

## DISCUSSION

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

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

Trustee asserts that Claim 18-1 filed by Robert V. Russo on August 30, 2019 is untimely because it was filed well over the 60 days after service of the Notice of Filed Claims, which was served on July 18, 2016. Moreover, no documentation was attached to support the claim. Debtor did not provide security information as required by the claim in part 9. Finally, the amount appears to be lower than the judgment asked for based on the complaint. The complaint asked for judgment in the amount of \$12,969.37 plus interest at 10%. The judgment was entered in July 2014. By now, said judgment adjusting for interest would result in a total claim of \$24,382.42. It is unclear if Debtor has been making payments which would have resulted in the amount claimed in the current proceeding.

Federal Rule of Bankruptcy Procedure 3004 allows the Debtor or the Trustee to file a proof of claim for a creditor, but limits the time period in which it is to be filed to only sixty (60) days after the expiration for the creditor to file the proof of claim.

Though no opposition was filed to this Objection to Claim, Debtor filed a separate counter motion in which Debtor seeks leave to file a late claim. DCN: PGM-5, a separate contested matter from this Objection. In reading that Counter Motion and the supporting pleadings (the Counter Motion not stating with particularity the grounds, with the Points and Authorities having an extensive "statement of facts," which sound in the nature of grounds required to be stated in the Counter-Motion), the court understands what opposition the Debtor would state to be:

- A. Debtors failed to serve Creditor at his correct address.
- B. Creditor "did not take notice" of Debtor's current bankruptcy case because his attorney at the time had negotiated a payment on his claim in the last year of the plan. (This appears to state that Creditor knew of the current bankruptcy case.)



- C. Debtors sent notice of the current bankruptcy case to an address which was incorrect for Debtor's former counsel.
- D. The Chapter 13 Plan in this case provides for payments to be made to Creditor in the fourth year of the Plan.
- E. Because there was no proof of claim, the Trustee could not make any disbursements.

It appears that the fourth year of the Plan would begin in September 2019.

- F. Debtor provides for a 0.00% dividend to other creditors.
- G. Because Debtors failed to timely file a claim in 2015, Debtor should be given leave to file it in 2019.
- H. The Debt they are trying to pay Creditor is nondischargeable.

Counter Motion and Points and Authorities, Dckts. 109, 111.

No testimony is provided by Debtor for the relief sought. Only testimony by Creditor's former counsel.

The Objection, as does the Counter-Motion miss the mark. The Debtor had knowledge of this case. The Debtor has knowledge of Creditor's claim. The Debtor allowed the deadline for filing the claim expire. Debtor offers no explanation, reason, or grounds for why Debtor, who knew of the bankruptcy case and the claim, be given leave to file a late claim.

What Debtor appears to be attempting to hide under the skin of the Creditor to assert grounds for why Debtor should be granted relief. Debtor does not have standing to be the Creditor. Debtor does not have standing to try and assert rights of Creditor. Debtor can assert Debtor's rights and seek relief for Debtor for those rights.

Here, no good faith grounds are provided for allowing Debtor to file a late claim four years into this case.

Though it appears questionable as to how or why Creditor's unsecured debt is being paid in a class other than the other general unsecured claims, it is binding. *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). However, the confirmed plan is not a proof of claim.

It is also curious that Debtor has chosen to file a naked proof of claim form, with no copy of the judgement or other documentation filed. This appears to be intended to keep the court in the dark about Creditor and what is going on in this case. Debtor has chosen to provide no testimony in requesting the leave to file a late claim or testify about the obligation.

Filed as an exhibit to the Counter-Motion is a copy of the bankruptcy court judgment in Debtor's 2010 bankruptcy case, Adversary Proceeding 14-2103. Dckt. 112. That Judgment merely

states that the obligation on a Sacramento County Small Claim Court judgment is nondischargeable, not stating the amount of such judgment. A copy of the Notice Small Claim Judgement is also an exhibit to the Counter-Motion, which states that it was in the amount of \$7,585.00 as of December 2006. *Id.* at 9.

Given that Debtor filed the best Proof of Claim, without seeking leave to file a late claims, they could and it is devoid of any substantive information. It is as if they hoped to just slip it by the Trustee and the court. Unfortunately, the Trustee was vigilant.

The Notice of Small Claim Judgement states that it is entered against only debtor Rodriguez Rigo Navarro, nobody else. In looking at this evidence and back at the Plan, the court wonders what good faith, bona legal basis Counsel for Debtor had in placing this claim in Class 6 and paying it ahead of other general unsecured claims as required by his Federal Rule of Bankruptcy Procedure 9011 certifications.

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

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

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

The Objection to Claim of Robert V. Russo, Esq. ("Creditor"), filed in this case by David Cusick, the Chapter 13 Trustee, ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection to Proof of Claim Number 18-1 of Creditor is sustained, and the claim is disallowed in its entirety.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor, Chapter 13 Trustee, creditors and Office of the United States Trustee on October 1, 2019. By the court's calculation, 28 days' notice was provided. 28 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

<p><b>The Counter motion to Allow Late-Filed Claim as Timely and Response to Objection to Claim 18-1 of Robert Russo is denied</b></p>
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Debtors Rigoberto Rodriguez and Felix Torres Rodriguez ("Objector"), on behalf of Creditor Robert Russo requests that the court allow Claim 18-1, late-filed claim as timely disallow the claim of , Proof of Claim No. 18-1 ("Claim"), Official Registry of Claims in this case.

Based on the evidence before the court, Debtors filed a separate counter-motion but failed to file an opposition to Trustee's Objection to Claim 18-1. The court has sustained the Objection to the Claim.

Though unopposed, the court considered the "opposition" that would be based on what is stated in this Counter-Motion, if such opposition has been filed in response to the Objection to Claim. As the court discussed in the ruling on the Objection to Claim, the rights and grounds for this Counter Motion are not the Debtor's. They assert that they did not give Creditor Robert Russo notice of the bankruptcy case (having mailed it to the wrong address). They assert that Creditor Robert Russo believed that his attorney had negotiated payment in the fourth year of this Plan, so he ignored not getting paid. This indicates that Robert Russo was well aware of this case.

What Debtor ignores is that Debtor was aware of this case. Debtor was aware of the claims filed. Debtor was aware of the Debtor to file a proof of claim if the creditor did not. Debtor offers nothing in support of this Motion as to why Debtor - who knew of Debtor's own case – knew of the claim – knew that no proof of claim had been filed – knew of the deadline for filing – and did nothing. Debtor does not have standing to assert possible rights that Creditor Robert Russo might have, with Mr. Russo also “missing in action” in connection with the Objection to Claim and this Counter-Motion.

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 Counter Motion to Allow Late-Filed Claim as Timely and Response to Objection to Claim 18-1 filed in this case by Debtor Rigoberto Rodriguez and Felix Torres Rodriguez 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 Counter Motion to Allow Late-Filed Claim 18-1 as Timely is denied.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 1, 2019. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

The Motion to Incur Debt was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----  
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<b>The Motion to Incur Debt is <span style="color: red;">XXXX</span>.</b>
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Rebecca Quentmeyer ("Debtor") seeks permission to purchase an option in real property commonly known as 14611 Dalmation Drive, Grass Valley CA 95949, California, ("Property") with a total purchase price of \$30,000.00 and monthly payments of not exceed \$2,500.00 to Ann Somervell over 5 years with.

## TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick, ("Trustee") disputes whether the terms of purposed "Rent to Own Agreement" with Debtor's mother qualifies under the Homestead Exemption under § 704.730. The Trustee argues that Debtor is buying an refundable option and not an ownership interest in a residence.

## DISCUSSION

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at \*1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions."

FED. R. BANKR. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

Debtor sets forth terms for a refundable option contract, the (“Purchase”), that purports to claim the Homestead Exemption under Cal. Civ. Proc. Code § 704.710(c). The definition of “‘Homestead’ means the principal dwelling.” Cal. Civ. Proc. Code § 704.710(c). A “dwelling” is broadly defined as where a person lives. Cal Civ. Proc. Code § 704.710(a).

Debtor’s proposed Purchase does fit within the meaning of a dwelling but the current proposed Purchase may not satisfy the property interest requirement. Although, Homestead Exemptions are to be construed liberally in favor of the homesteader. *In re Rolland*, Bkrcty.C.D.Cal.2004, 317 B.R. 402. Debtor’s proposed Purchase looks like an investment and request to pay rent rather than acquiring an interest in property. The Purchase as a leasehold would fail to qualify for the exemption. A option contract including a term of years may include a property interest sufficient to satisfy Cal. Civ. Proc. Code § 704.710(c).

“The term of years is a present interest that terminates on the expiration of a term that is measured in one or more years . . . .” Restatement (Third) of Property (Wills & Don. Trans.) § 24.6 (2011). A term of years may be appropriate here if it were for 7 years and not 5 years. Debtor would be far enough a long in the plan and creditors would be no worse off.

Debtor and Trustee are on the cutting edge on how to do address the tension that exists between the need to reinvest the exemption, the protection of the exemption, and the limitations on someone in bankruptcy getting a new, big dollar, real property purchase loan. A contract for 7 or more years, as a term of years, at the cost of \$30,000.00 dollars might be viewed as obtaining an interest in property in which the exempt proceeds is being invested, not merely a personal property interest in a refundable option contract. When purchasing such an interest in real property in which the exemption could be claimed, Debtor would not be making a \$2,500.00 “rent” payment for the interest purchased. Maybe the Debtor would be making a \$1,000 a month payment that would go toward taxes and insurance. That would allow the Debtor to increase the monthly plan payments that increase the dividend to unsecured claims. Everyone wins, with the Debtor not losing the exemption.

**IT IS ORDERED** that the Motion is **xxxx**.

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

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

The Motion to Incur Debt filed by Rebecca Quentmeyer (“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 **xxxxxx denied, and Rebecca Quentmeyer is not authorized to incur debt pursuant to the terms of the agreement, Exhibit A, Dekt. 37.**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on September 19, 2019. By the court's calculation, 40 days' notice was provided. 14 days' notice is required.

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

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

U.S. Bank Trust, N.A. ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

- A. Debtor's Plan fails to provide for pre-petition arrearage in the amount of \$8,999.18

## DISCUSSION

Creditor's objections are well-taken.

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts \$8,999.18 in pre-petition arrearage. The Plan does not propose to cure those arrearage. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the

collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearage.

Creditor seeks better plan protection. Debtor listed Creditor's lien under section 3.10 as a Class 4 claim. Creditor requests its claim be classified under section 3.07 as a Class 1 claim, as Debtor is in default due to the existing pre-petition arrearage. If Debtor does not intend to cure the pre-petition arrearage or maintain ongoing payments, Creditor requests be classified as a Class 3 claim which allows satisfaction by the surrender of collateral.

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 U.S. Bank Trust, N.A. ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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



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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on October 15, 2019. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

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<p><b>The Motion to Extend the Automatic Stay is granted.</b></p>
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Linda Conkling ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 17-24512-B-13J) was dismissed on June 11, 2019, after Debtor filed an *ex parte* motion to voluntarily dismiss Chapter 13 bankruptcy case. *See* Order, Bankr. E.D. Cal. No. 17-24512-B13J, Dckt. 101, June 11, 2019. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because Debtor wanted to first attempt to cure the HOA arrears on the property where she currently resides, listed in Debtor's Schedule A/B in the current case as the real property commonly known as 2481-2483 American River Drive, Sacramento, California, 95825 ("Property").

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). As this court has noted in other cases, Congress expressly provides in 11 U.S.C. § 362(c)(3)(A) that the automatic stay **terminates as to Debtor**, and nothing more. In 11 U.S.C.

§ 362(c)(4), Congress expressly provides that the automatic stay **never goes into effect in the bankruptcy case** when the conditions of that section are met. Congress clearly knows the difference between a debtor, the bankruptcy estate (for which there are separate express provisions under 11 U.S.C. § 362(a) to protect property of the bankruptcy estate) and the bankruptcy case. While terminated as to Debtor, the plain language of 11 U.S.C. § 362(c)(3) is limited to the automatic stay as to only Debtor. The subsequently filed case is presumed to be filed in bad faith if one or more of Debtor's cases was pending within the year preceding filing of the instant case. *Id.* § 362(c)(3)(C)(i)(I). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* § 362(c)(3)(C).

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

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

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

Debtor has sufficiently rebutted the presumption of bad faith. The previous plan was filed in an effort to restructure her finances to cure the pre-filing mortgage and HOA arrears on the Property. Having been unable to cure the arrears, the Current Case is being filed in an effort to save the equity in the Property by avoiding foreclosure on the Property. The Debtor purchased the Property on or about July 21, 2000, nineteen years and a few months from the filing of the Current Case. Debtor has lived at the Property the entirety of that duration as an owner occupier. According to Debtor's Schedules, the Property has equity in the approximate amount of \$296,521.85. Debtor should be afforded the reasonable opportunity to protect that equity.

In addition, Debtor's income, monetary support from her family, and rental income will allow Debtor to cover all her necessary obligations in addition to the proposed Chapter 13 plan payment. Her expenses are reasonable. The current plan provides for ongoing mortgage payments to Seterus, Inc. and Ditech Financial, LLC until the Property is sold. The plan provides for the payment of potential secured creditors Main Street Acquisition Corp and American River E. Ranch HOA through the sale of the Property. The plan further provides to pay all unsecured non-priority claims at no less than 100% of the approved claim. Debtor in all likelihood will succeed in completing the bankruptcy process this time around.

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

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

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

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

**IT IS ORDERED** that the Motion is granted, and the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes and parties, unless terminated by operation of law or further order of this court.

## FINAL RULINGS

21. [18-23815-E-7](#)  
[TLA-1](#)

IVALDO LENCI  
Thomas Amberg

OMNIBUS OBJECTION TO CLAIMS  
9-11-19 [\[28\]](#)

**CASE CONVERTED TO CHAPTER 7:**  
**9/27/19**

**Final Ruling:** No appearance at the October 29, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Chapter 13, and Office of the United States Trustee on September 11, 2019. By the court's calculation, 46 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

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

**The Objection to Proof of Claim Numbers 5, 6, and 7 of Franklin Boyden is overruled without prejudice.**

Ivaldo C. Lenci, Jr., Chapter 7 Debtor ("Objector") requests that the court disallow the claim of Franklin Boyden ("Creditor"), Proof of Claim Nos. 5, 6, and 7 ("Claims"), Official Registry of Claims in this case. Objector asserts that the Claims have not been timely filed. *See* FED. R. BANKR. P. 3002(c). The deadline for filing proofs of claim in this case was August 28, 2018. Notice of Bankruptcy Filing and Deadlines, Dckt. 28. No order granting leave to authorize the late filing of such claims in the Chapter 13 case was issued.

## DISCUSSION

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

The deadline for filing a proof of claim in this matter was August 28, 2018. Creditor's Proofs of Claim were filed on September 14, 2018, September 19, 2018, and February 15, 2019. No order granting relief for an untimely-filed proof of claim for Creditor had been issued by the court.

The case having been converted, a new deadline for filing proofs of claim will be set, with the court having issued the notice that there is no deadline having been set in the Chapter 7 case (it appearing to the Trustee to be one in which there will be no assets to distribute). Notice, Dckt. 43.

There being no deadline for filing in the converted case, the Objection is overruled without prejudice.

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

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

The Objection to Claim of Franklin Boyden ("Creditor") filed in this case by Ivaldo C. Lenci, Jr., Debtor, ("Objector") having been presented to the court, the case having now been converted to one under Chapter 7 and no deadline for filing claims have been issued in the Chapter 7 case, the Debtor not having demonstrated standing to object to the claim in this Chapter 7 case, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection to Proof of Claim Number 5, 6, and 7 of Franklin Boyden is overruled without prejudice.

CASE CONVERTED TO CHAPTER 7:  
9/27/19

**Final Ruling:** No appearance at the October 29, 2019 hearing is required.  
-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on September 11, 2019. By the court's calculation, 46 days' notice was provided. 42 days' notice is required.

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 denied without prejudice as moot.**

The debtor, Ivaldo C. Lenci, Jr., ("Debtor") seeks to modify the confirmed plan. Debtor filed a Notice of Conversion on September 27, 2019, however, converting the case to a proceeding under Chapter 7. Dckt. 43. Debtor may convert a Chapter 13 case to a Chapter 7 case at any time. 11 U.S.C. § 1307(a). The right is nearly absolute, and the conversion is automatic and immediate. FED. R. BANKR. P. 1017(f)(3); *In re Bullock*, 41 B.R. 637, 638 (Bankr. E.D. Penn. 1984); *In re McFadden*, 37 B.R. 520, 521 (Bankr. M.D. Penn. 1984). Debtor's case was converted to a proceeding under Chapter 7 by operation of law once the Notice of Conversion was filed on September 27, 2019. *McFadden*, 37 B.R. at 521.

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, Ivaldo C. Lenci, Jr. (“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 Modified Plan is denied without prejudice as moot.

23. [19-25327-E-13](#) **KIM BRILL**  
[DPC-1](#) **Pro Se**

**OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P. CUSICK  
10-2-19 [14]**

**Final Ruling:** No appearance at the October 29, 2019 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) on October 2, 2019. By the court’s calculation, 48 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.

<p><b>The Objection is sustained, and the proposed Chapter 13 Plan is not confirmed.</b></p>
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11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Subsequent to the filing of this Objection, Debtor filed an Amended Plan but no corresponding Motion to Confirm on October 23, 2019. Dckt. 23. 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.

24.	<a href="#"><u>19-24939-E-13</u></a> <a href="#"><u>DPC-1</u></a> 11 thru 13	DIANA EVANS Pro Se	<b>OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS</b> 9-24-19 <a href="#"><u>[27]</u></a>
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**Final Ruling:** No appearance at the October 29, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor on September 24, 2019. By the court’s calculation, 35 days’ notice was provided. 28 days’ notice is required.

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

<p><b>The Objection to Claimed Exemptions is sustained, and the exemptions are disallowed in their entirety.</b></p>
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The Chapter 13 Trustee, David Cusick (“Trustee”) objects to Diana Evans (“Debtor”) claimed federal exemptions under 11 U.S.C. § 522(b)(2) because they are not authorized under California law. The Chapter 13 Trustee’s Objection is sustained, and the claimed exemptions are disallowed.

A claimed exemption is presumptively valid. *In re Carter*, 182 F.3d 1027, 1029 at fn.3 (9th Cir.1999); *See also* 11 U.S.C. § 522(l). Once an exemption has been claimed, “the objecting party has the burden of proving that the exemptions are not properly claimed.” FED. R. BANKR. P. RULE 4003(c);



*In re Davis*, 323 B.R. 732, 736 (9th Cir. B.A.P. 2005). If the objecting party produces evidence to rebut the presumptively valid exemption, the burden of production then shifts to the debtor to produce unequivocal evidence to demonstrate the exemption is proper. *In re Elliott*, 523 B.R. 188, 192 (9th Cir. B.A.P. 2014). The burden of persuasion, however, always remains with the objecting party. *Id.*

Debtor claimed federal exemptions under Item 1 of the Petition. Trustee argues that this exemption was claimed in error and that as such it must be disallowed. Further, federal exemptions are not allowed under California law which is the applicable law based on debtor's domicile for the 730 days prior to filing. Debtor's petition shows residence and mailing address in Solano County.

Further, Trustee points out that Debtor failed to state the amount of any exemptions claimed but checks 100% of the fair market value for one of the three properties listed.

Debtor has not filed a response or any documents to show that the exemptions are proper. Thus, Debtor's claimed exemptions are disallowed because they are not applicable and Debtor has failed to state amount of exemptions claimed.

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

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

The Objection to Claimed Exemptions filed by 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 Objection is sustained, and the claimed federal exemptions under 11 U.S.C. §522(b)(2) are disallowed in their entirety.

25. [19-24860](#)-E-13      GERALD/BARBARA MILLER      MOTION TO VALUE COLLATERAL OF  
[SLE-3](#)      Steele Lanphier      TD AUTO FINANCE LLC  
16 thru 18      9-19-19 [\[39\]](#)

**Final Ruling:** No appearance at the October 29, 2019 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on September 19, 2019. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

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

**The Motion to Value Collateral and Secured Claim of TD Auto Finance LLC ("Creditor") is granted, and Creditor's secured claim is determined to have a value of \$15,000.00.**

The Motion filed by Gerald William Miller and Barbara Miller ("Debtor") to value the secured claim of TD Auto Finance LLC ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 41. Debtor is the owner of a 2016 Chrysler 300 ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$15,000.00 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. 3, was filed by Creditor on August 22, 2019. The Proof of Claim asserts a secured claim in the amount of \$23,509.03.

#### **TRUSTEE'S NON-OPPOSITION**

David Cusick, the Chapter 13 Trustee ("Trustee") does not oppose the motion.

## DISCUSSION

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

Debtor's Declaration provides factual detail as to the condition of the Vehicle, including the presence of chips and scratches, and the need for new tires. Dckt. 41. 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 November 27, 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 \$23,509.03. Declaration, Dckt. 41. 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 \$15,000.00, 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 Gerald William Miller and Barbara Miller ("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 TD Auto Finance LLC ("Creditor") secured by an asset described as 2016 Chrysler 300 ("Vehicle") is determined to be a secured claim in the amount of \$15,000.00, 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 \$15,000.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

**Final Ruling:** No appearance at the October 29, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) on October 1, 2019. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

The Chapter 13 Trustee, David Cusick ("Trustee") objects to James Sheridan Ellenberger's ("Debtor") claimed exemptions under California law because three vehicles were over-exempted, another exemption was improperly applied, and no exemption amount was listed under the clothes exemption.

California Code of Civil Procedure ("C.C.P.") § 704.010, allows an exemption totaling not more than \$2,300 in motor vehicles (whether one or a combination of vehicles). Debtor listed a Dodge Durango, a Dodge Ram, and a trailer under this exemption. Debtor then incorrectly claimed an aggregate of \$9,975.00 exempt (claiming \$3,345.00 per vehicle exempt), applying the maximum under the exemption to each vehicle instead. Thus, these assets were over-exempted.

Debtor has also attempted to claim the vehicle exemption in a trailer. However, this exemption does not apply as to Debtor's trailer, which under California Vehicle Code § 415(a) is not considered a motor vehicle.

Finally, the debtor identifies clothes being exempted under C.C.P. § 704.020; however, the dollar amount for the exemption was left blank.

A claimed exemption is presumptively valid. *In re Carter*, 182 F.3d 1027, 1029 at fn.3 (9th Cir.1999); *See also* 11 U.S.C. § 522(l). Once an exemption has been claimed, “the objecting party has the burden of proving that the exemptions are not properly claimed.” FED. R. BANKR. P. RULE 4003(c); *In re Davis*, 323 B.R. 732, 736 (9th Cir. B.A.P. 2005). If the objecting party produces evidence to rebut the presumptively valid exemption, the burden of production then shifts to the debtor to produce unequivocal evidence to demonstrate the exemption is proper. *In re Elliott*, 523 B.R. 188, 192 (9th Cir. B.A.P. 2014). The burden of persuasion, however, always remains with the objecting party. *Id.*

The Chapter 13 Trustee’s Objection is sustained, and the claimed exemptions are disallowed as follows:

1. For all amounts in excess of \$2,300.00 in the Dodge Durango;
2. For all amounts in the Dodge Ram and the Trailer; and
3. For clothing, without prejudice, no dollar amount having been claimed exempt.

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

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

The Objection to Claimed Exemptions filed by 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 Objection is sustained, and the claimed exemptions are disallowed as follows:

1. For all amounts in excess of \$2,300.00 in the Dodge Durango;
2. For all amounts in the Dodge Ram and the Trailer; and
3. For clothing, without prejudice, no dollar amount having been claimed exempt.

**Final Ruling: No appearance at the October 29, 2019 Hearing is required.**

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney, on October 2, 2019. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

Upon review of the Motion and supporting pleadings, Debtor's concurrence the Plan should not be confirmed, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion. The defaults of the non-responding parties in interest are entered.

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

- A. Debtor fails the liquidation analysis under 11 U.S.C. § 1325(a)(4).
- B. Debtor failed to list their ownership of a subcontracting corporation and failed to provide business documents once it was disclosed at the First Meeting of Creditors.
- C. Debtor did not provide 521 documents namely, pay advices and tax returns.
- D. Trustee is uncertain as to how attorneys fees will be paid.

Debtors filed a Response to Trustee's Objection on October 13, 2019.

## DISCUSSION

Trustee's objections are well-taken. There are serious issues regarding this Plan that cannot be ignored.

Debtor's plan fails the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). Trustee states that Debtors' non-exempt equity totals \$20,250.00, which includes Debtors' residence in the amount of \$20,000.00 and Chase checking/savings accounts in the amount of \$25.00. The Plan provides a 1% dividend to unsecured creditors, for a total of \$4,476.43.

Debtors admitted at the First Meeting of Creditors that they are 100% owner of a Sub S Corporation, as a subcontractor. The Trustee requested Debtors provide the following business documents:

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

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

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). Also, 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 all necessary pay stubs and has failed to provide the tax transcript. Those are independent grounds to deny confirmation. 11 U.S.C. § 1325(a)(1).

Further, Trustee objects on the grounds that attorney fees are uncertain in this case because the plan shows three different types of compensation. According to Section 3.05, the attorney was paid \$2,000 prior to the filing of the case but states "TBD" regarding additional fees. Further, Debtors' Plan indicates Debtors' attorney will seek approval of attorneys fees while at the same time under section 3.06 indicating that Debtors' attorney will be paid \$300.00 each month in attorneys fees. Finally, under the filed Disclosure of Compensation of Attorney for Debtor, the attorney agreed to accept "an hourly fee per Lodestar" and has received \$2,310.00 prior to filing. There is too much discrepancy and uncertainty regarding attorneys fees that must be addressed.

In Debtors' Response, they agree that the current Plan is not confirmable and that Trustee's objection should be granted. Moreover, Debtors stated that they would be proposing an amended plan "shortly." As of May 28, 2019, no such plan has been filed.

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.

28. <a href="#"><u>19-25066-E-13</u></a> <b>ANTHONY/RENEE TOKUNO</b>	<b>Seth Hanson</b>	<b>OBJECTION TO CONFIRMATION OF PLAN BY THE BANK OF NEW YORK MELLON 9-30-19 <a href="#"><u>[23]</u></a></b>
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**Final Ruling: No appearance at the October 29, 2019 Hearing is required.**

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

Not Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, and Office of the United States Trustee on September 30, 2019. By the court’s calculation, 29 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.

<p><b>The Objection is sustained.</b></p>
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11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Subsequent to the filing of this Objection, Debtor filed an Amended Plan on October 2, 2019 and a corresponding Motion



to Confirm on October 8, 2019. Dckts. 26 and 34. Filing a new plan is a *de facto* withdrawal of the pending plan. The Objection is sustained, and the plan is not confirmed.

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

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

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

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

29. [19-23771-E-13](#) **WILLIAM MONSON** **MOTION TO CONFIRM PLAN**  
[JSO-1](#) **Jeffrey Ogilvie** **9-17-19 [20]**

**Final Ruling:** No appearance at the October 29, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on September 17, 2019. By the court’s calculation, 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.

<b>The Motion to Confirm the Amended Plan is granted.</b>
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11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, William Arthur Monson (“Debtor”) has provided evidence in support of confirmation. The

Chapter 13 Trustee, David Cusick (“Trustee”), filed a Non-Opposition on October 9, 2019. Dckt. 33. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, William Arthur Monson (“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 17, 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.	<a href="#"><u>18-24198-E-13</u></a>	ANDRE ABERNATHY	<b>OBJECTION TO CLAIM OF CANDELA AT WESTLAKE COMMUNITY ASSOCIATION, CLAIM NUMBER 9 9-12-19 [48]</b>
	<a href="#"><u>DPC-2</u></a>		

**Final Ruling:** No appearance at the October 29, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Debtor, Debtor’s Attorney, and Office of the United States Trustee on September 12, 2019. By the court’s calculation, 45 days’ notice was provided. 44 days’ notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days’ notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days’ notice for written opposition).

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

**The Objection to Proof of Claim Number 9 of Candela at Westlake Community Association is sustained, and the claim is disallowed in its entirety.**

David Cusick, the Chapter 13 Trustee, (“Objector”) requests that the court disallow the claim of Candela at Westlake Community Association (“Creditor”), Proof of Claim No. 9 (“Claim”), Official Registry of Claims in this case. The Claim is asserted to be in the amount of \$5,000.00. Objector asserts that it is uncertain whether claim is secured or unsecured and no documentation was provided to support the claim.

**DISCUSSION**

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

Trustee’s objection is valid. A claim requires documentation and must be clear regarding the type of claim. However, Debtor’s counsel has addressed his concerns. Debtor filed a Non-Opposition on October 13, 2019 stating that “[w]ith all candor to the Court, Debtor’s counsel filed the claim by mistake as a result of confusion between Section 522 in chapter 7 as opposed to Section 506 in chapter 13. Debtor will need to file a motion to value collateral, an amended plan and a motion to confirm it (HOA lien wholly unsecured; no claim filed).” Non-Opposition, Dckt. 53.

Thus, Creditor’s claim is disallowed in its entirety. The Objection to the Proof of Claim is sustained.

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

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

The Objection to Claim of Candela at Westlake Community Association (“Creditor”), filed in this case by David Cusick, the Chapter 13 Trustee, (“Objector”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection to Proof of Claim Number 9 of Creditor is sustained, and the claim is disallowed in its entirety.