

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

December 10, 2019 at 2:00 p.m.

1.	<u>19-26101</u> -C-13 <u>RPZ-1</u>	JUDITH (JUDI) HART Pro Se	OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A. 11-21-19 [24]
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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, and US Trustee on November 21, 2019. By the court's calculation, 19 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.

Wells Fargo Bank, N.A., as trustee ("Creditor") opposes confirmation of the Plan on several grounds related to the Debtor's omission of providing for Creditor's prepetition arrearages of \$9,745.27. However, the Amended Plan is far from confirmable on several other grounds.

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FILED REQUEST FOR A CONTINUANCE

Debtor filed with the court a request for a continuance on December 4, 2019. Dckt. 28. The request states Debtor received some documents late, she has been unable to contact her first attorney who was paid up front and moved away, and Debtor is not certain what is missing.

DISCUSSION

The Debtor, proceeding in Pro Se, filed an Amended Plan on November 14, 2019. Dckt. 22. The document is incomplete—cutting out many of the provisions of the Local Chapter 13 Plan Form, including all pages that specify treatment of secured, priority, and general unsecured claims. While a plan payment is specified, it is unclear what claims are being paid through the plan.

The Amended Plan also includes a mortgage statement and amended statement of income and expenses. The Amended Income is stated to be \$2,900.00—up from \$1,060 stated in Schedule I. Dckt. 12. The explanation for the over 100% increase is stated to be “increased business revenue(Private Home Maintenance).”

The Amended Expenses are stated to total only \$415, which includes gas, electric, cable, internet, and water. This amount is down from \$3,388(which included rent, food, transportation, etc.). Schedule J, Dckt. 12.

Debtor here clearly needs the assistance of knowledgeable bankruptcy counsel. The omission of most of the plan contents and disingenuous Amended Income and Expenses do not demonstrate a case being prosecuted in good faith. While Debtor recently hired a document preparer to assist (Dckt. 33.), that professional may not be able to provide enough guidance when it comes down to developing a confirmable Chapter 13 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 Wells Fargo Bank, N.A., as trustee (“Creditor”) holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on November 13, 2019. By the court’s calculation, 27 days’ notice was provided. 21 days’ notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days’ notice when requested fees exceed \$1,000.00).

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

The Motion for Allowance of Professional Fees is granted.

Pauldeep Bains, the Attorney (“Applicant”) for Jayme Lewis Wood and Heather Lee Wood, the Chapter 13 Debtor (“Client”), makes a Request for the Additional Allowance of Fees and Expenses in this case.

Fees are requested for work performed post-confirmation date of January 19, 2018.
Applicant requests fees in the amount of \$1,850.00

APPLICABLE LAW

Statutory Basis For Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

In determining the amount of reasonable compensation to be awarded to an

examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

(i) unnecessary duplication of services; or

(ii) services that were not—

(I) reasonably likely to benefit the debtor's estate;

(II) necessary to the administration of the case.

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

Reasonable Fees

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

A. Were the services authorized?

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

estate at the time they were rendered?

- C. Are the services documented adequately?
- D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?
- E. Did the attorney exercise reasonable billing judgment?

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

Reasonable Billing Judgment

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

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

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

A review of the application shows that Applicant’s for the Estate include post-confirmation case administration and prosecution of motions to sell property, incur debt, and modify Debtor’s Chapter 13 Plan. The court finds the services were beneficial to Client and the Estate and were reasonable.

“No-Look” Fees

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

- (a) Compensation. Compensation paid to attorneys for the representation of

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

...

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

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

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

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

The Order Confirming the Chapter 13 Plan expressly provides that Applicant is allowed \$4,000.00 in attorneys’ fees, the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dckt. 33. Applicant prepared the order confirming the Plan.

Lodestar Analysis

If Applicant believes that there has been substantial and unanticipated legal services that have been provided, then such additional fees may be requested as provided in Local Bankruptcy Rule 2016-1(c)(3). The attorney may file a fee application, and the court will consider the fees to be awarded pursuant to 11 U.S.C. §§ 329, 330, and 331. For bankruptcy cases in the Ninth Circuit, “the primary method” to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves

“multiplying the number of hours reasonably expended by a reasonable hourly rate.” *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). “This calculation provides an objective basis on which to make an initial estimate of the value of a lawyer’s services.” *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). A compensation award based on the lodestar is a presumptively reasonable fee. *In re Manoa Fin. Co.*, 853 F.2d 687, 691 (9th Cir. 1988).

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

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

Case Administration: Applicant spent 2.6 hours communicating with Debtor, reviewing documents, and replying to a motion to dismiss.

Motion to Incur Debt: Applicant spent 2.1 hours drafting and prosecuting a motion to incur debt.

Motion to Sell: Applicant spent 3.2 hours drafting and prosecuting a motion to sell Debtor’s real property.

Motion to Modify Plans: Applicant spent 14.3 hours developing and seeking confirmation of modified plans.

Motion to Employ Broker: Applicant spent 3.9 hours preparing a motion to employ a broker to sell Debtor’s property.

Motion for Fees: Applicant spent 2 hours preparing this Application.

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

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Pauldeep Bains, Esq.	28.1	\$300.00	\$8,430.00
Total Fees Requested for Period of Application			\$1,850.00

FEES ALLOWED

Fees

The unique facts surrounding the case, including post-confirmation case administration, and prosecution of motions to incur debt, modify plan, and sell property of the Estate, raise substantial and unanticipated work for the benefit of the Estate, Debtor, and parties in interest. The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. The request for additional fees in the amount of \$1,850.00 is approved pursuant to 11 U.S.C. § 330 and authorized to be paid by David Cusick (“the Chapter 13 Trustee”) from the available funds of the Plan in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

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

Fees	\$1,850.00
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pursuant to this Application as final fees pursuant to 11 U.S.C. § 330 in this case.

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

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

The Motion for Allowance of Fees and Expenses filed by Pauldeep Bains (“Applicant”), Attorney having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Pauldeep Bains is allowed the following fees and expenses as a professional of the Estate:

Pauldeep Bains, Professional Employed by Jayme Lewis Wood and Heather Lee Wood (“Debtor”)

Fees in the amount of \$1,850.00

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for Debtor.

IT IS FURTHER ORDERED that David Cusick (“the Chapter 13 Trustee”) is authorized to pay the fees allowed by this Order from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

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

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

Local Rule 3007-1 Objection to Claim—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 Trustee, and Office of the United States Trustee on October 24, 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 4 of Cavalry SPV, LLC is overruled.

Edward Claudius Uzzle, the debtor ("Objector") requests that the court disallow the claim of Cavalry SPV, LLC ("Creditor"), Proof of Claim No. 4 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$4,206.98. Objector asserts that the Statute of Limitations on the collection of contract claims in California is four years from the date the balance was due under the contract or four years from the date the last payment was made under the contract.

However, the Objection and supporting Declaration do not actually provide evidence of when the last payment was. They both state "The last date a payment was received was over four years from date of last payment."

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party

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

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

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

The Bankruptcy Code provides certain extensions of time for actions a creditor may take when a debtor files for bankruptcy. Specifically, 11 U.S.C. § 108(c) provides:

Except as provided in section 524 of this title, if **applicable nonbankruptcy law**, an order entered in a nonbankruptcy proceeding, or an agreement **fixes a period for commencing or continuing a civil action** in a court other than a bankruptcy court **on a claim against the debtor**, or against an individual with respect to which such individual is protected under section 1201 or 1301 of this title, and such period has not expired before the date of the filing of the petition, then **such period does not expire until the later of--**

(1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or

(2) 30 days after notice of the termination or expiration of the stay under section 362, 922, 1201, or 1301 of this title, as the case may be, with respect to such claim.

A review of Proof of Claim No. 4 lists the charge off date as August 8, 2016. That is less than four years ago. No last payment or transaction date is provided.

Debtor provides no evidence of the last payment date other than to say it was over four years ago.

Thus, the only evidence presented suggests the statute of limitations has not elapsed.

The Objection is overruled.

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

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

The Objection to Claim of Cavalry SPV, LLC (“Creditor”) filed in this case by Edward Claudius Uzzle, the debtor (“Objector”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Proof of Claim Number 4 of Cavalry SPV, LLC is sustained, and the claim is disallowed in its entirety.

Attorney’s fees and costs, if any, shall be requested as provided by Federal Rule of Civil Procedure 54 and Federal Rules of Bankruptcy Procedure 7054 and 9014.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on October 28, 2019. By the court's calculation, 43 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is ~~XXXXX~~.

The debtor, David Gordon Ritchie ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for payments of \$693.00 for 60 months, and a 9.5% dividend on unsecured claims totaling \$94,100.00. Amended Plan, Dckt. 41. 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 November 15, 2019. Dckt. 47. Trustee opposes confirmation on the basis that Debtor's Declaration (Dckt. 42) was not signed or dated.

CREDITOR MARIANNE LANSPA'S OPPOSITION

Creditor, Marianne Lanspa ("Creditor") filed an Opposition on November 22, 2019. Dckt. 50. Creditor opposes confirmation on the following grounds:

1. Debtor is deducting \$2,100 a month for support payments that he is not actually making.

2. Debtor had \$4,5000.00 in a bank account at the time of filing, and did not pay those funds towards secured claims.
3. Debtor's Amended Schedule J indicates a household of 1. However, the Statement of Monthly Income still reflects a 2 person household. The contradiction suggests the plan is not Debtor's best efforts. Debtor also listed expenses he is not paying, including domestic support and mortgage payments on a surrendered home.
4. Debtor includes expenses that should be verified in light of Debtor's move to an apartment, including \$100 for maintenance, \$65 for water and garbage, and \$525 for transportation (the new apartment being closer to Debtor's work).

DISCUSSION

As noted by the Trustee, the Declaration filed in support was not signed. That is reason alone to deny the Motion.

Creditor has also raised questions as to the accuracy of several listed expenses, including that domestic support obligations are not actually being paid. That would suggest the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

At the hearing, **XXXXXXXXXXXXXXXXXX**.

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

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

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

IT IS ORDERED that the Motion to Confirm the Amended Plan is **XXXXXXXXXXXXXXXXXX**.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's attorney November 12, 2019. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

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

- A. The plan proposes valuing two secured claims held by Travis Credit Union. However, no motion to value secured claim has been filed.
- B. The Plan proposes a flat fee for attorney fees. The Disclosure of Attorney Compensation specifies that counsel's fee will not include stay relief or lien avoidance motions, which services the Local Rules require to be included in a flat fee case.

DISCUSSION

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of Travis Credit Union. No motion seeking the valuation of any secured claim has been filed. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

Additionally, the Plan terms are inconsistent with Local Bankruptcy Rule 2017-1(a) which provides that an attorney who is retained to represent a debtor in a bankruptcy case constitutes an appearance for all purposes in the case, including, without limitation, motions for relief from the automatic stay and motions to avoid liens. Where the Plan terms conflict with the Local Rules, the Plan does not appear to be feasible.

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 17, 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 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, Sean Raymond Fries ("Debtor") seeks confirmation of the Chapter 13 Plan. The Plan provides for \$0 to be paid through month 3, for payments of \$3,135.00 for the remainder of the plan term, and for a 0 percent dividend on unsecured claims totaling \$11,687.00. Plan, Dckt. 29. 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 November 5, 2019. Dckt. 33. Trustee opposes confirmation on the basis that Debtor is \$3,135.00 delinquent in plan payments.

NOVEMBER 26, 2019 HEARING

At the November 26, 2019 hearing, all parties agreed to a continuance to allow Debtor to become current in payments. Civil Minutes, Dckt. 36.

DISCUSSION

The Chapter 13 Trustee asserts that Debtor is \$3,135.00 delinquent in plan payments, which represents one month of the plan payment. This is where the present Amended Plan waives the first three missed plan payments.

Furthermore, before the hearing another plan payment will be due. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

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, Sean Raymond Fries (“Debtor”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on November 22, 2019. By the court's calculation, 18 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.

Wilmington Savings Fund Society, FSB, d/b/a Christiana Trust, not individually but as trustee for Pretium Mortgage Acquisition Trust("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that the Plan is not feasible.

Creditor argues that its prepetition arrearage and ongoing postpetition payments are greater than provided for in the Plan. Proof of Claim, No. 6, filed by Creditor asserts a prepetition arrearage of \$32,602.90 and ongoing payment of \$835.21. The Plan provides for only \$28,715.35 and \$781.14.Dckt. 2.

Creditor argues further that because the Plan payment is \$2,000.00, and Debtor's Schedules reflect disposable monthly income of only \$2,000.33 (Dckt. 1), the Plan is not feasible.

Creditor also notes that Proof of Claim, No. 5, was filed by Great Western Trust (an

unscheduled creditor), and asserts a secured claim of \$40,798.51 with a prepetition arrearage of \$25,157.51.

Based on the foregoing the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

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

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

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

The Objection to the Chapter 13 Plan filed by Wilmington Savings Fund Society, FSB, d/b/a Christiana Trust, not individually but as trustee for Pretium Mortgage Acquisition Trust (“Creditor”) holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

THRU #10

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's attorney November 12, 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>The Objection to Confirmation of Plan is sustained.</p>

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

- A. The proposed plan provides for a secured claim in Class 1 secured by real property that was sold at foreclosure.
- B. Debtor voluntarily dismissed a prior case after a motion for stay relief was filed, which case was dismissed within 180 days of filing the present case.

DISCUSSION

Chapter 13 Eligibility

11 U.S.C. § 109(emphasis added) states the following:

(g)Notwithstanding any other provision of this section, **no individual or family farmer may be a debtor under this title who has been a debtor in a case pending under this title at any time in the preceding 180 days if—**

(1)the case was dismissed by the court for willful failure of the debtor to abide by orders of the court, or to appear before the court in proper prosecution of the case; or

(2) the debtor requested and obtained the voluntary dismissal of the case following the filing of a request for relief from the automatic stay provided by section 362 of this title.

In Debtor prior case, no. 18-23571, a motion for relief was filed by Wells Fargo Bank, N.A. on November 5, 2019. Case No. 18-23571, *Id.*, Dckt. 39. After numerous hearings, that Motion was granted by order issued July 3, 2019.

Less than a week later, the Debtor filed an *Ex Parte* Application to voluntarily dismiss the case, and the case was dismissed July 9, 2019. *Id.*, Dckts. 83, 84.

The present case was filed on September 23, 2019, less than three months after the Debtor's voluntarily dismissed case.

Therefore, the Debtor does not appear eligible for Chapter 13 relief.

Additionally, the plan currently provides for the sale of real property which was already foreclosed on. Therefore, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

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

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's attorney, Chapter 13 Trustee, and the US Trustee on November 4, 2019. By the court's calculation, 36 days' notice was provided. 14 days' notice is required.

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

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

Wilmington Trust, National Association, not in its Individual Capacity, but solely as Trustee for MFRA Trust 2016-1 ("Creditor") filed an Objection to Confirmation which largely consists of a factual case overview.

While the grounds for objection are not clearly expressed, among the factual assertions is that the real property securing Creditor's claim was already foreclosed on, that the plan proposes selling that real property, and that the Creditor objects to the secured claim being reinstated. These facts clearly demonstrate the plan is not feasible. 11 U.S.C. § 1325(a)(6).

Additionally, the court has sustained the Trustee's Objection (Dckt. 44), in part on grounds that the Debtor is ineligible for Chapter 13 relief.

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 Wilmington Trust, National Association, not in its Individual Capacity, but solely as Trustee for MFRA Trust 2016-1 (“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).

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 US Trustee on November 14, 2019. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

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

U.S. Bank Trust National Association as Trustee of the Chalet Series IV Trust ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

- A. The proposed plan treats Creditor's claim as a Class 4, and does not propose curing the \$18,415.53 in prepetition arrearages.
- B. The Plan proposes ongoing postpetition payments of \$1,174 where the actual payment amount is \$1,400.41.
- C. The plan is not feasible because Debtor's schedules reflect net monthly income of \$1,850.00 where payments to Creditor alone would need to be \$1,707.34 a month.

DISCUSSION

Creditor's objections are well-taken. The Plan is facially infeasible where it treats Creditor's claim as a Class 4, failing to provide for any of the prepetition arrearages.

Additionally, the court has sustained the Trustee's Objection (Dckt. 44), in part on grounds that the Debtor is ineligible for Chapter 13 relief, and in other part because the plan proposes to sell real property that was already foreclosed on.

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 National Association as Trustee of the Chalet Series IV Trust ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

THRU #14

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's attorney November 18, 2019. By the court's calculation, 22 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 XXXXXXXX

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

- A. The Plan relies on valuing two secured claims. While Debtor filed two motions to value secured claim, the outcome was not determined before the Objection was filed.
- B. Debtor has a biweekly deduction on Schedule I for "PERS redeposit" in the amount of \$262.15 (\$489.988 monthly). Debtor's Statement of Earnings and Deductions submitted to the Trustee show the deduction is only made once every month.

DISCUSSION

As stated, because the deduction is biweekly, Debtor will have \$262.15 more in income to put into the plan.

On November 26, 2019, the court heard and granted both of Debtor's motions seeking to value secured claims. Dckts. 60, 61. Debtor's motion to value the secured claim of CarMax (Dckt. 30) was granted and valued \$3,575 higher (\$12,425 rather than \$8,850) than provided for in the Plan.

However, with the Debtor having more income to put into the Plan, it appears Debtor may be able to make an increased payment, which could be specified in the order confirming the plan.

At the hearing, **XXXXXXXXXXXXXXXXXX**.

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 is **XXXXXXX**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor’s counsel, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on November 21, 2019. By the court’s calculation, 19 days’ notice was provided. 14 days’ notice is required.

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

The Objection to Confirmation of Plan is XXXXXXXX

Creditor CarMax Business Services, LLC (“Creditor”) holding a secured claim opposes confirmation of the Plan on the basis that it is receiving insufficient interest on its claim secured by a 2013 Infiniti G37.

The proposed plan provides an interest rate of 5.00%. Dckt. 13. Creditor argues this rate is insufficient because two risk factors are present—Debtor’s limited disposable income and the original contract being extended.

The Supreme Court set the approach for adequate interest in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). In *Till*, a plurality of the Court supported the “formula approach” for fixing post-petition interest rates. *Id.* Courts in this district have interpreted *Till* to require the use of the formula approach. See *In re Cachu*, 321 B.R. 716 (Bankr. E.D. Cal. 2005); see also *Bank of Montreal v. Official*

Comm. of Unsecured Creditors (In re American Homepatient, Inc.), 420 F.3d 559, 566 (6th Cir. 2005) (*Till* treated as a decision of the Court). Even before *Till*, the Ninth Circuit had a preference for the formula approach. See *Cachu*, 321 B.R. at 719 (citing *In re Fowler*, 903 F.2d 694 (9th Cir. 1990)).

The court agrees with the court in *Cachu* that the correct valuation of the interest rate is the prime rate in effect at the commencement of this case plus a risk adjustment. Here, Creditor argues the interest provided its claim should be 6.25%—the prime rate of 4.25 plus 2% for risk.

The court is not persuaded by Creditor’s arguments as to risk. That Debtor is providing all or nearly all disposable income into the plan is a feature of almost all Chapter 13 cases. Creditor’s argument would create a near bright line rule.

Also not compelling is the argument that extending the contract term by 23 months justifies an increase. While the risk is increased, the Creditor is already receiving extra interest for 23 months it would not have received.

The plan already proving more than the prime rate, no risk factors being identified which justify an increased rate, and no other grounds for opposing confirmation having been argued, the Objection is overruled.

However, there being an Objection by the Trustee, it is not clear if the Plan is confirmable.

At the hearing, **XXXXXXXXXXXXXXXXXX**.

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

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

The Objection to the Chapter 13 Plan filed by CarMax Business Services, 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 is **XXXXXXX**.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on November 21, 2019. By the court's calculation, 19 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 XXXXXXX
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Creditor CarMax Business Services, LLC ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that it is receiving insufficient interest on its claim secured by a 2011 BMW 1281.

The proposed plan provides an interest rate of 5.00%. Dckt. 13. Creditor argues this rate is insufficient because two risk factors are present—Debtor's limited disposable income and the original contract being extended.

The Supreme Court set the approach for adequate interest in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). In *Till*, a plurality of the Court supported the "formula approach" for fixing post-petition interest rates. *Id.* Courts in this district have interpreted *Till* to require the use of the formula approach. See *In re Cachu*, 321 B.R. 716 (Bankr. E.D. Cal. 2005); see also *Bank of Montreal v. Official Comm. of Unsecured Creditors (In re American Homepatient, Inc.)*, 420 F.3d 559, 566 (6th Cir. 2005)

(*Till* treated as a decision of the Court). Even before *Till*, the Ninth Circuit had a preference for the formula approach. See *Cachu*, 321 B.R. at 719 (citing *In re Fowler*, 903 F.2d 694 (9th Cir. 1990)).

The court agrees with the court in *Cachu* that the correct valuation of the interest rate is the prime rate in effect at the commencement of this case plus a risk adjustment. Here, Creditor argues the interest provided its claim should be 6.25%—the prime rate of 4.25 plus 2% for risk.

The court is not persuaded by Creditor’s arguments as to risk. That Debtor is providing all or nearly all disposable income into the plan is a feature of almost all Chapter 13 cases. Creditor’s argument would create a near bright line rule.

Also not compelling is the argument that extending the contract term by 23 months justifies an increase. While the risk is increased, the Creditor is already receiving extra interest for 23 months it would not have received.

The plan already providing more than the prime rate, no risk factors being identified which justify an increased rate, and no other grounds for opposing confirmation having been argued, the Objection is overruled.

However, there being an Objection by the Trustee, it is not clear if the Plan is confirmable.

At the hearing, **XXXXXXXXXXXXXXXXXX**.

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

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

The Objection to the Chapter 13 Plan filed by CarMax Business Services, 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 is **XXXXXXX**.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on November 21, 2019. By the court's calculation, 19 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 XXXXXXX.

Deutsche Bank National Trust Company, as Trustee For HSI Asset Securitization Corporation Trust 2006-Opt2, Mortgage-Pass-Through Certificates, Series 2006-OPT2 ("Creditor") holding a secured claim opposes confirmation of the Plan because the Plan provides for arrearages of \$5,650.00 where the correct prepetition arrearage is \$7,502.61.

Creditor argues that because the incorrect amount is stated, the Plan does not cure arrearages promptly.

However, the Plan "provides" for paying all of Creditor's pre-petition arrearage, as the Plan expressly provides that it is the amounts set forth in the proof of claim filed, or order of the court determining the amount of the claim, and "not this plan," that determines the amount and classification

of the claim. Plan ¶ 3.02; Dckt. 13.

Creditor offers no other basis for denying confirmation, such as feasibility to pay this claim as provided for in the Plan. Thus, on its face the Objection cannot be sustained.

The Trustee also filed an Objection to the Plan, wherein Trustee notes Debtor has additional monthly income of \$262.15 due to a deduction being taken monthly rather than biweekly. It appears that amount is sufficient to cover all the claims and arrearages that are greater than Debtor anticipated in the Plan.

At the hearing, **XXXXXXXXXXXXXXXXXX**.

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

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

The Objection to the Chapter 13 Plan filed by Deutsche Bank National Trust Company, as Trustee For HSI Asset Securitization Corporation Trust 2006-Opt2, Mortgage-Pass-Through Certificates, Series 2006 (“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 is **XXXXXXX**.

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Chapter 13 Trustee, and Office of the United States Trustee on October 25, 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). The defaults of the non-responding parties and other parties in interest are entered.

<p>The Objection to Proof of Claim is denied without prejudice.</p>
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The debtor, Cecelia Carol Coyle ("Objector") requests that the court disallow the claim of Daimler Trust ("Creditor"), Proof of Claim No. 5 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$14,068.85.

Objector makes two arguments: (1) the Claim shows the incorrect amount Debtor paid, and (2) no proof was provided that the amount Creditor received for selling the vehicle leased pursuant to the agreement was \$26,000.00. Objector argues that this is cause to deny the Claim in its entirety.

The Debtor's Declaration filed in support of the Objection testifies "Claimant incorrectly shows the amount paid by me during the duration I had the vehicle," and that Debtor never received evidence of the leased vehicle sale price. Dckt. 23.

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.

Here, no evidence was presented by Debtor. Debtor merely concludes that Creditor incorrectly calculated the amounts paid, without actually explaining what was the correct or incorrect amount.

Additionally, Debtor has not provided any legal authority showing what a Creditor does and does not have to include in a proof of claim for it to be valid. Debtor argues there is no "proof of sale or declaration" showing the sale, without any legal support. The associate-level legal research and assembling of arguments has instead been left to the court.

The Objection to the Proof of Claim is overruled without prejudice. The Debtor may file the objection again, supported with legal analysis explaining what Creditor has to provide in support of the proof of claim and why denial of the claim in its entirety is the proper remedy, as well as an evidentiary analysis showing what was paid by Debtor and what is owed.

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 Daimler Trust ("Creditor"), filed in this case by Cecelia Carol Coyle ("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 is denied without prejudice.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on October 22, 2019. By the court's calculation, 49 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is granted.
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The debtor, Francisco Rodriguez ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for payments of \$2,084.00 through October 25, 2019, and payments of \$2,240 for the remainder of the Plan term. Amended Plan, Dckt. 32. 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 a Response indicating that Debtor is \$5.00 delinquent in plan payments. Dckt. 38.

DISCUSSION

While the Plan otherwise appears confirmable, there is a small delinquency of \$5.00.

At the hearing, ~~xxxxxxxxxxxxxx~~.

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

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

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

~~The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Francisco Rodriguez (“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 October 22, 2019, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on October 18, 2019. By the court's calculation, 53 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

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

The debtor, Carol Ann McPhaul ("Debtor") seeks confirmation of the Modified Plan to address greater than anticipated claims and adjust Debtor's budget. Declaration, Dckt. 29. The Modified Plan provides \$11,520.00 paid through October 2019, and payments of \$685 for the remainder of the Plan Administrator term. Modified Plan, Dckt. 31. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on November 21, 2019. Dckt. 33. Trustee opposes confirmation on the grounds that supplemental schedules were filed as exhibits and not separately, and because the plan does not specify treatment of the supplemental claims included in Section 7.02.

DEBTOR'S RESPONSE

Debtor filed a Response on November 29, 2019, stating the Supplemental Schedules have now been filed separately, and the Debtor agrees to specify claim treatment in the order confirming plan.

DISCUSSION

Debtor filed Supplemental Schedules on November 29, 2019. Dckt. 36. With the Trustee's other ground for opposition addressable in the order confirming plan, the Modified Plan appears confirmable.

However, while stating that certain claim treatment would be specified, Debtor has not actually expressed what those specifications would be.

At the hearing, ~~xxxxxxxxxxxxxxxxxx~~.

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

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

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

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

~~**IT IS ORDERED** that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on October 18, 2019, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on November 12, 2019. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

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

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

Creditor Jean Burrows ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

- A. The Plan does not provide for Creditor's full claim amount.
- B. Creditor's claim matures in April 1, 2020, and the loan terms cannot be modified because the loan is secured by Debtor's principal residence. .

DISCUSSION

Creditor's argument is that the Plan will not work because its claim is coming due in less than a year.

The Plan provides for Creditor's claim as a Class 1, with an arrearage dividend of \$741.38 and postpetition payment of \$2,158.17. Dckt. 2.

Creditor filed Proof of Claim, No. 1, on November 6, 2019. Included in the attachments to the Claim is the Note for the loan, which provides for an April 1, 2020 maturity date.

Thus, the plan is deficient in two respects. First, it missclassified Creditor's claim as a Class 1 maturing after plan completion. Second, because Plan proposes ongoing payments after the full amount of the loan comes due, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

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

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

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

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

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

THRU #20

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

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

Local Rule 9014-1(f)(2) Objection—Hearing Not Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor's, and Debtor's Attorney on October 23, 2019. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

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

- A. Debtor's plan relies on two lien avoidance motions, both set for a November 5, 2019, hearing date.
- B. Debtor's plan payment is coming due \$2,534.77.

DISCUSSION

The court continued the hearing to track Debtor's motion to value (Dckt. 20) which had been continued.

At the hearing, **XXXXXXXXXXXXXXXXXX**.

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on October 21, 2019. By the court's calculation, 31 days' notice was provided. 28 days' notice is required.

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

**The Motion to Value Collateral and Secured Claim of mPower ("Creditor") is
XXXXXXXXXX**

The Motion to Value filed by Randell Dee Comstock and Maria Elvira Comstock ("Debtor") to value the secured claim of mPower ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 18. Debtor is the owner of the subject real property commonly known as 6380 Hemlock Way, Rocklin, California ("Property"). Debtor seeks to value the Property at a fair market value of \$270,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank* (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

(a)(1) An allowed claim of a creditor secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property, or to the extent of the amount

subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

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

NOVEMBER 5 HEARING AND OPPOSITION BY PLACER COUNTY

At the November 5, 2019 hearing the court noted that there was an Opposition filed by the County of Placer ("Placer") the day before the hearing. Dckt. 36. Placer argued that Creditor's lien is in the nature of a tax lien, ahead in priority of Wells Fargo Bank's first DOT.

The court continued the hearing to allow Debtor to file a written response by November 19, 2019.

DISCUSSION

Since the prior hearing, nothing has been filed with the court.

At the hearing, **XXXXXXXXXXXXXXXXXX**.

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

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

The Motion to Value Collateral and Secured Claim filed by Randell Dee Comstock and Maria Elvira Comstock ("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 **XXXXXXXXXX**

**No Telephonic Appearances Permitted for
Debtor Robert D. Wagner or
for Bruce Rorty, Debtor's Counsel**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on October 29, 2019. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss is XXXXXXXX

Creditor US Bank Trust N.A. as Trustee of Chalet Series III Trust, its successors and/or assignees ("Creditor") filed this Motion To Dismiss on the basis that the debtor, Robert D. Wagner ("Debtor"), materially breached the Confirmed Plan.

Debtor's Fourth Amended Plan was confirmed on August 2, 2016. Dckts. 206, 215, 217. While the Confirmed Plan provided for Creditor's claim as a Class 1 to be paid through the Plan, Section 6.02 of the additional provisions stated the following:

*The Debtor failed to direct his May 2015 ongoing mortgage payments in month one to the Trustee, but did make the payments directly to his mortgage companies. Class I payments through the Trustee began the second month of the Plan, in this case June 2015.

Dckt. 206.

Creditor asserts that after a recent audit, it was discovered Debtor never made the May 2015 payment. Creditor filed the Declaration of Jessica Watson and a Payment History (Exhibit D) as evidence the May 2015 payment was not made. Dckts. 228, 230.

Creditor argues that failing to make the May 2015 payment was material breach of the Plan.

TRUSTEE'S RESPONSE

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response on November 8, 2019. Dckt. 233. Trustee asserts that Debtor has completed all payments made through the plan (including \$99,121.05 in post-petition mortgage and \$40,604.79 in arrearage payments to Creditor's claim).

Trustee states he hopes Creditor and Debtor's counsel will resolve the dispute over the May 2015 payment.

NOVEMBER 26 HEARING

At the November 26, 2019, hearing date the court continued the hearing to allow the parties to discuss resolution of the matter. Dckt. 240. In light of Debtor's counsel's failure to respond to the Motion before the hearing date (as required by the Local Rules when the hearing is set on (f)(1) notice), the court ordered Debtor and Debtor's counsel to appear in-person. Dckt. 241.

DISCUSSION

Debtor did not file any responsive pleading to the motion. However, the court has an independent duty to make certain that the requirements for confirmation have been met. *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).

Creditor argues and provides evidence that Debtor breached the Confirmed Plan terms by failing to make a payment in May 2015. The Plan requires that the first month's payment be made directly to Creditor and not through the Chapter 13 Trustee.

In that this dispute concerns a payment not made through the Plan but directly by the Debtor, it appears that the correct avenue is for the creditor to seek foreclosure on its collateral.

No party filed any responsive pleading after the prior hearing.

At the hearing, **xxxxxxxxxxxxxxxxxx**.

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

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

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

IT IS ORDERED that the hearing on the Motion to Dismiss is
XXXXXXXXXXXXXX.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on October 17, 2019. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

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

-----.

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

JPMorgan Chase Bank, National Association ("Creditor"), opposes confirmation of the Plan on the basis that:

- A. Debtor's plan does not provide for escrow payments on the mortgage.
- B. The Debtor's plan proposes interest on creditor's secured claim of only 3.829%.
- C. Because the escrow and increased interest are not provided for, the plan is not feasible.

NOVEMBER 5, 2019 HEARING

At the November 5, 2019 hearing, the court continued the hearing at the request of the parties who indicated they may be able to work out treatment of Creditor's claim as a Class 4.

DISCUSSION

No supplemental pleadings were filed since the prior hearing.

At the hearing, xxxxxxxxxxxxxx.

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 3.829%. Creditor's claim is secured by Debtor's residence. 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)).

Here, the interest rate proposed is insufficient.

Additionally, the Debtor does not provide in the Plan, or as an expense on Schedule J, payments for insurance and taxes on the Debtor's residence. Therefore, the plan is not feasible. 11 U.S.C. § 1325(a)(6).

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

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

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

The Objection to the Chapter 13 Plan filed by JP Morgan Chase Bank, 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 Objection. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's attorney November 8, 2019. By the court's calculation, 32 days' notice was provided. 14 days' notice is required.

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

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

The Chapter 13 Trustee, David Cusick ("Trustee"), filed this Objection, and later a Supplemental Objection which explains which grounds for opposition are still unaddressed. Dckts. 16, 22.

The remaining grounds for Trustee opposing confirmation are that:

1. The Debtor did not amend the Rights and Responsibilities to clearly show what Debtor's counsel is to be paid.
2. Debtor has not provided all pay advices and the 2018 tax return required by 11 U.S.C. § 521.
3. Debtor lists a 10 percent interest in a partnership where the evidence shows Debtor's interest is 15 percent.

DEBTOR'S RESPONSE

Debtor filed a Response on December 4, 2019. Dckt. 28. Debtor notes that an Amended Rights and Responsibilities, and an Amended Schedule A/B indicating the 15% partnership interest, were filed to address Trustee's grounds for opposition. Dckts. 20, 21.

Debtor also asserts that the 2018 taxes have been provided, and that the printout of draws received from the partnership are the best and only equivalent of pay stubs showing her monthly income received.

DISCUSSION

Debtor has filed an Amended Rights and Responsibilities to address the correct attorney fee; filed an Amended Schedule A/B to indicate the correct interest in Debtor's partnership; and has provided all 11 U.S.C. § 521 documents.

All grounds for opposition having been resolved, the Plan does comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is overruled, and the Plan is confirmed.

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

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

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

IT IS ORDERED that the Objection is overruled, and Treena Lise McAndrews's ("Debtor") Chapter 13 Plan filed on September 29, 2019, is confirmed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

THRU #27

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on November 13, 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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The Objection to Confirmation of Plan is XXXXXXXXXX

Deutsche Bank National Trust Company, As Trustee For Morgan Stanley ABS Capital I Inc. Trust 2007-NC2 Mortgage Pass-Through Certificates, Series 2007-NC2 ("Creditor") holding a secured claim opposes confirmation of the Plan because the Plan provides for arrearages of \$4,736.43 where the correct prepetition arrearage stated in Proof of Claim, No. 14, is \$7,692.52.

Creditor argues that because the incorrect amount is stated, the Plan does not cure arrearages promptly.

However, the Plan "provides" for paying all of Creditor's pre-petition arrearage, as the Plan expressly provides that it is the amounts set forth in the proof of claim filed, or order of the court determining the amount of the claim, and "not this plan," that determines the amount and classification of the claim. Plan ¶ 3.02; Dckt. 12.

Thus, the question is not whether the plan provides the correct arrearage, but whether the plan is adequately funded to provide for the correct amount (and is therefore feasible).

At the hearing, ~~xxxxxxxxxxxxxx~~.

~~_____ The Plan does comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is overruled, and the Plan is confirmed.~~

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

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

~~_____ The Objection to the Chapter 13 Plan filed by Deutsche Bank National Trust Company, As Trustee For Morgan Stanley ABS Capital I Inc. Trust 2007-NC2 Mortgage Pass-Through Certificates, Series 2007-NC2 (“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 is overruled, and Kevin Jeffrey Macy and Kristy Ann Macy’s (“Debtor”) Chapter 13 Plan filed on September 30, 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.

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's attorney November 13, 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>The Objection to Confirmation of Plan is overruled.</p>

The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that the Plan relies on valuing two secured claims held by CarMax auto Finance.

DISCUSSION

A review of the docket shows the court has granted Debtor two motions seeking to value secured claims held by CarMax auto Finance.

Trustee has not argued any other grounds for opposition to confirmation. Therefore, the Objection is overruled.

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

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

hearing.

The Objection to the Chapter 13 Plan filed by 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 Kevin Jeffrey Macy and Kristy Ann Macy’s (“Debtor”) Chapter 13 Plan filed on September 30, 2019, is confirmed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Final Ruling: No appearance at the December 10, 2019, hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on November 6, 2019. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of CarMax Business Services, LLC ("Creditor") is granted, and Creditor's secured claim is determined to have a value of \$8,000.00.

The Motion filed by Kevin Jeffrey Macy and Kristy Ann Macy ("Debtor") to value the secured claim of CarMax Business Services, LLC ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 24. Debtor is the owner of a 2014 Ford fusion ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$8,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The Debtor's Declaration includes Debtor's opinion of value, which also includes the following detailed information about parts of the Vehicle that need repairs:

- A. Computer system
- B. Back up camera
- C. Windshield is broken
- D. Alignment is off
- E. Radio does not play CD's

- F. Smells like fish
- G. Weather seal in trunk is ripped
- H. Weather seal on driver's door is ripped
- I. Passenger seat has a hole

Dckt. 24.

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on October 14, 2016, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$17,314.66. Proof of Claim, No. 2. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of \$8,000.0, 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 Kevin Jeffrey Macy and Kristy Ann Macy ("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 CarMax Business Services, LLC ("Creditor") secured by an asset described as 2014 Ford fusion ("Vehicle") is determined to be a secured claim in the amount of \$8,000.00, 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 \$8,000.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

Final Ruling: No appearance at the December 10, 2019, hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on November 7, 2019. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of CarMax Business Services, LLC ("Creditor") is granted, and Creditor's secured claim is determined to have a value of \$5,500.00.

The Motion filed by Kevin Jeffrey Macy and Kristy Ann Macy ("Debtor") to value the secured claim of CarMax Business Services, LLC ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 29. Debtor is the owner of a 2010 GMC Acadia ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$5,500.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The Debtor's Declaration includes Debtor's opinion of value, which also includes the following detailed information about parts of the Vehicle that need repairs:

- A. Media/stereo system/DVD/speakers broken
- B. Rack and pinion out
- C. Front end headlights won't work
- D. Wiring issues
- E. A/C compressor out

- F. Tailgate motor doesn't work
- G. Front right tire wobbles
- H. Various scratches on paint

Dckt. 29.

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on April 18, 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 \$13,840.80. Proof of Claim, No. 1. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of \$5,500.0, 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 Kevin Jeffrey Macy and Kristy Ann Macy ("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 CarMax Business Services, LLC ("Creditor") secured by an asset described as 2010 GMC Acadia ("Vehicle") is determined to be a secured claim in the amount of \$5,500.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$5,500.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's attorney on November 5, 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 -----
-----.

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

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

- A. the Debtor is \$900 delinquent in plan payments.
- B. Debtor admitted at the Meeting of Creditors that she is no longer employed, and is receiving only \$1,694.00 in unemployment income.

DISCUSSION

Trustee argues Debtor can no longer make payments as she admitted at the Meeting of Creditors that she is no longer employed, and is receiving only \$1,694.00 in unemployment income. Debtor's delinquency of \$900 in plan payments supports that argument.

The Plan is not feasible. 11 U.S.C. § 1325(a)(6).

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

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

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

The Objection to the Chapter 13 Plan filed by 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.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's attorney on November 20, 2019. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

**The hearing on the Objection to Confirmation of Plan is continued to 2:00 p.m.
on XXXXXX.**

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

- A. The Debtor failed to list the Employment Development Department of California's ("EDD") claim as a secured Class 2 claim to be valued by the value of the collateral.
- B. The Plan relies on valuing EDD's claim.

DISCUSSION

The Debtor's Motion seeking to value EDD's claim was denied at the November 26, 2019 hearing. Civil Minutes, Dckt. 44. Two things were noted at that hearing—there was no copy of the recorded abstract showing there was in fact a lien. Second, that the motion did not explain what value the Debtor's personal property had, the judgment lien by the EDD being secured by real *and personal* property the court could not value the secured claim with evidence of only the real property value.

California Unemployment Insurance Code § 1379.5 provides, in pertinent part (emphasis added):

§ 1379.5. Judgment; Recording as lien against property of person liable;
Execution

An abstract of judgment obtained pursuant to subdivision (a) or (b) of Section 1379, or a copy thereof, may be recorded with the county recorder of any county.

From the time of recording, the judgment shall constitute a lien against all real or personal property of the liable person in that county owned by the liable person at the time, or which the liable person may afterwards, but before the lien expires, acquire. The lien shall have the force, effect, and priority of a judgment lien and shall continue for 10 years from the time of recording of the abstract of judgment obtained pursuant to subdivision (a) or (b) of Section 1379, unless sooner released or otherwise discharged.

...

Debtor filed another Motion seeking to value the secured claim. Dckt. 39. While the Debtor filed a copy of the recorded abstract, Debtor again failed to provide the value of personal property. Thus, it appears the motion will again be denied without prejudice.

However, the hearing on the new Motion to Value will not be conducted until December 17, 2019. Debtor could provide such evidence in support of the Motion to Value, Debtor's counsel seeking leave of the court to file such supplemental pleading.

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 hearing on the Objection to Confirmation of the Plan is continued to **2:00 p.m. on xxxxxxxxxx**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on October 18, 2019. By the court's calculation, 53 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

<p>The Motion to Confirm the Modified Plan is XXXXX.</p>
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The debtor, Sang Coong Hoong ("Debtor") seeks confirmation of the Modified Plan to account for higher than anticipated tax claims, and to adjust for increased living expenses. Declaration, Dckt. 25. The Modified Plan provides for \$5,448 paid through October 2019, and for payments of \$351 for the remainder of the Plan term. Modified Plan, Dckt. 27. 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 November 21, 2019. Dckt. 29. Trustee opposes confirmation on the following grounds:

1. Debtor filed supplemental schedules as an exhibit, and not as a separate document on the docket.
2. Debtor's Supplemental Schedule I includes a new voluntary contribution of \$150 towards retirement.

3. Section 7.02 of the plan provides for \$300.00 to be paid to creditor Cenlar FSB, but does not specify treatment. Trustee believes the issue should be addressed in the order confirming plan.
4. The Modified Plan provides for \$5,448 paid through October 2019, where Debtor actually paid \$5,544.00.

DEBTOR'S RESPONSE

Debtor filed a Response on December 3, 2019, stating that a separate supplemental budget was filed, that Debtor is willing to cancel the voluntary retirement contribution, and that Debtor agrees to clarify plan terms in the order confirming the modified plan.

DISCUSSION

Debtor filed a Supplemental Schedules I and J on November 29, 2019. Dckt. 32. Debtor indicates being amenable to stopping the voluntary retirement contribution, but still lists that deduction in the Supplemental Schedule I. Debtor proposes addressing the Trustee's other grounds for opposition in the order confirming plan.

At the hearing, **XXXXXXXXXXXXXXXXXX**.

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

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

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

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

FINAL RULINGS

31. [19-23099](#)-C-13 AILEEN AMBROSIO MOTION TO CONFIRM PLAN
[JRG-3](#) Jessica Galletta 10-23-19 [73]

Final Ruling: No appearance at the December 10, 2019, hearing is required.

The Motion To Confirm is dismissed without prejudice.

Aileen Fermin Ambrosio (“Debtor”) having filed a “Withdrawal of Motion”, which the court construes to be an Ex Parte Motion to Dismiss the pending Motion on December 4, 2019. Dckt. 94; no prejudice to the responding party appearing by the dismissal of the Motion; Debtor having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by The Chapter 13 Trustee, David Cusick (“Trustee”); the Ex Parte Motion is granted, Debtor’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion To Confirm filed by Aileen Fermin Ambrosio (“Debtor”) having been presented to the court, Debtor having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 94, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion To Confirm is dismissed without prejudice.

Final Ruling: No appearance at the December 10, 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 October 15, 2019. By the court's calculation, 56 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Blong Vang and Zoua Yang ("Debtor") have provided evidence in support of confirmation.

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on November 15, 2019. Dckt. 26. Thereafter, Trustee filed a Status Report indicating a proposed order confirming plan had been received which addresses all grounds for opposition. Dckt. 28.

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, Blong Vang and Zoua Yang ("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 October 15, 2019, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Final Ruling: No appearance at the December 10, 2019, hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 22, 2019. By the court's calculation, 49 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, James Mejia ("Debtor") has provided evidence in support of confirmation. No opposition to the Motion has been filed by the Chapter 13 Trustee, David Cusick ("Trustee"), or by creditors. The 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, James Mejia ("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 October 22, 2019, is confirmed. Debtor's Counsel shall

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

Final Ruling: No appearance at the December 10, 2019, hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor’s Attorney on November 12, 2019. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

The Objection to Discharge is sustained.

The Chapter 13 Trustee, David Cusick (“Trustee”), objects to Javier Lazareth Martinez and Courtney Michelle Martinez’s (“Debtor”) discharge in this case. Objector argues that Debtor is not entitled to a discharge in the instant bankruptcy case because Debtor previously received a discharge in a Chapter 7 case.

Debtor filed a Chapter 7 bankruptcy case on April 11, 2017. Case No. 17-22400. Debtor received a discharge on September 17, 2019. Case No. 17-22400, Dckt. 50.

The instant case was filed under Chapter 13 on October 2, 2019.

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

Here, Debtor received a discharge under 11 U.S.C. § 727 on September 17, 2019, which is less than four years preceding the date of the filing of the instant case. Case No. 17-22400, Dckt. 50. Therefore, pursuant to 11 U.S.C. § 1328(f)(1), Debtor is not eligible for a discharge in the instant case.

Therefore, the Objection is overruled. Upon successful completion of the instant case (Case No. 19-26212), the case shall be closed without the entry of a discharge, and Debtor shall receive no discharge in the instant case.

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

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

The Objection to Discharge filed by 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 to Discharge is sustained, and upon successful completion of the instant case, Case No. 19-26212, the case shall be closed without the entry of a discharge.

Final Ruling: No appearance at the December 10, 2019, hearing is required.

Local Rule 9014-1(f)(2) Objection—Hearing Not Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor’s attorney November 13, 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.

After a review of the record, a hearing will not assist the court and is not required.

**The hearing on the Objection to Confirmation of the Plan is continued to
January 14, 2019 at 2:00p.m.**

The Chapter 13 Trustee, David Cusick (“Trustee”), opposes confirmation of the Plan on the basis that the plan relies on valuing the secured claim of Santander Consumer USA, and no motion to value that claim has been filed.

DISCUSSION

Debtor filed a Motion To Value on November 19, 2019. Dckt. 17. That Motion is set for hearing January 14, 2019 at 2:00p.m.

The court shall continue the hearing on this Objection to be heard alongside the Motion 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 Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Objection to Confirmation of the Plan is continued to January 14, 2019 at 2:00p.m.

THRU #37

Final Ruling: No appearance at the December 10, 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 Creditor, Chapter 13 Trustee, and Office of the United States Trustee on October 30, 2019. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of Regional Acceptance Corporation ("Creditor") is granted and Creditor's secured claim is determined to have a value of \$16,000.00.

The Motion filed by Felicia Yvette Jackson ("Debtor") to value the secured claim of Regional Acceptance Corporation ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 30. Debtor is the owner of a 2017 Hyundai Eleantra ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$16,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

DISCUSSION

At the hearing on Debtor's prior motion attempting to value Creditor's claim, the court denied the motion on the grounds that insufficient information had been provided to assist the trier of fact at coming to a value for the vehicle. Civil Minutes, Dckt 24. Debtor's Declaration supporting this Motion includes greater detail about the Vehicle's condition.

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

which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$31,128.93. Proof of Claim, No. 1. 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 \$16,000.00, 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 Felicia Yvette Jackson ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Regional Acceptance Corporation ("Creditor") secured by an asset described as 2017 Hyundai Eleantra ("Vehicle") is determined to be a secured claim in the amount of \$16,000.00, 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 \$16,000.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

Final Ruling: No appearance at the December 10, 2019, hearing is required.

Local Rule 9014-1(f)(2) Objection—Hearing Not Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, and Debtor's Attorney on October 23, 2019. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

The Objection to Confirmation of Plan is overruled.
--

The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that the plan relies on valuing the secured claim of Regional Acceptance Corporation, and Debtor's Motion To Value (Dckt. 8) that claim was denied without prejudice.

DEBTOR'S RESPONSE

Debtor filed a Response on October 30, 2019. Dckt. 25. Debtor mistakenly responds to a "motion to dismiss" where this is an Objection to Confirmation.

Debtor notes there is a new Motion To Value (Dckt. 28), and requests the Trustee's opposition to plan confirmation be overruled.

DISCUSSION

A review of the docket shows the court granted the Debtor's second Motion To Value (Dckt. 28.), resolving the Trustee's sole ground for opposition.

The Plan does comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is overruled, and the Plan is confirmed.

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

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

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

IT IS ORDERED that the Objection is overruled, and Sean Raymond Fries’s (“Debtor”) Chapter 13 Plan filed on October 17, 2019, is confirmed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Final Ruling: No appearance at the December 10, 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 October 3, 2019. By the court's calculation, 68 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

<p>The Motion to Confirm the Amended Plan is granted.</p>
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11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Joshua Michael Bartucca and Michele Christine Bartucca ("Debtor") have provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition November 26, 2019. Dckt. 58. 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, Joshua Michael Bartucca and Michele Christine Bartucca ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Debtor's Amended Chapter 13 Plan filed on October 3, 2019, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Final Ruling: No appearance at the December 10, 2019, hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on November 5, 2019. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

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

This Motion requests an order avoiding the judicial lien of Carter-Jones Collection Service, Inc., an Oregon corporation, dba Northern Credit Service ("Creditor") against property of the debtor, Richard Lee Dunn and Susan Diane Dunn ("Debtor") commonly known as 3011 Chancer Way, Shasta Lake, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$5,075.00. Exhibit A, Dckt. 36. An abstract of judgment was recorded with Shasta County on August 6, 2018, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$347,000.00 as of the petition date. Dckt. 1.. The unavoidable and senior liens that total \$279,401.00 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$67,599.00 on Schedule C. Dckt. 1.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no

equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor's exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT-DRAFTED ORDER

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

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

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

IT IS ORDERED that the judgment lien of Carter-Jones Collection Service, Inc., an Oregon corporation, dba Northern Credit Service, California Superior Court for Shasta County Case No. CVC7-2017-1154, recorded on August 6, 2018, Document No. 2018-0021808, with the Shasta County Recorder, against the real property commonly known as 3011 Chancer Way, Shasta Lake, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

Final Ruling: No appearance at the December 10, 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 October 21, 2019. By the court's calculation, 50 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Timothy Ragsdale and Maricris Ragsdale ("Debtor") have provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition December 3, 2019. Dckt. 32. 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, Timothy Ragsdale and Maricris Ragsdale ("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 October 21, 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.

THRU #42

Final Ruling: No appearance at the December 10, 2019, hearing is required.

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

Sufficient Notice Not Provided. No proof of service filed.

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

The Debtor, then in *pro se*, filed this motion seeking to extend the automatic stay beyond 30 days (this case having been filed where a prior case was pending and dismissed within the prior year).

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). However, an important caveat is that the court can only extend the stay where the hearing is concluded within the 30 days the stay was still in effect.

the present case was filed September 30, 2019. Therefore, the stay expired before this Motion was even filed on November 4, 2019.

As this court has noted in other cases, Congress expressly provides in 11 U.S.C. § 362(c)(3)(A) that the automatic stay **terminates as to Debtor**, and nothing more. In 11 U.S.C. § 362(c)(4), Congress expressly provides that the automatic stay **never goes into effect in the bankruptcy case** when the conditions of that section are met. Congress clearly knows the difference between a debtor, the bankruptcy estate (for which there are separate express provisions under 11 U.S.C. § 362(a) to protect property of the bankruptcy estate) and the bankruptcy case. While terminated as to Debtor, the plain language of 11 U.S.C. § 362(c)(3) is limited to the automatic stay as to only Debtor.

The subsequently filed case is presumed to be filed in bad faith if one or more of Debtor's cases was pending within the year preceding filing of the instant case. *Id.* § 362(c)(3)(C)(i)(I). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* § 362(c)(3)(C).

The Motion is denied.

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

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

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

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

Final Ruling: No appearance at the December 10, 2019, hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) on November 20, 2019. By the court's calculation, 20 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>The Objection is sustained, and the proposed Chapter 13 Plan is not confirmed.</p>
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11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Subsequent to the filing of this Objection, Debtor filed an Amended Plan and corresponding Motion to Confirm on December 3, 2019. Dckts. 36, 40. Filing a new plan is a de facto withdrawal of the pending plan. The Objection is sustained, and the plan is not confirmed.

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

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

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

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

Final Ruling: No appearance at the December 10, 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 November 5, 2019. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

<p>The Motion to Confirm the Amended Plan is granted.</p>
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11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Jami Lynn Kear ("Debtor") has provided evidence in support of confirmation.

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response on November 26, 2019, indicating non-opposition so long as the order confirming plan clarifies tax refunds exceeding \$2,000.00. Dckt. 57. Debtor filed a Response indicating agreement with the changes. Dckt. 63.

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, Jami Lynn Kear ("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 November 5, 2019, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Final Ruling: No appearance at the December 10, 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 November 4, 2019. By the court’s calculation, 36 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

<p>The Motion to Confirm the Amended Plan is granted.</p>
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11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Christopher Michael Chang and Alison Elizabeth Hoyer (“Debtor”) has provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Non-Opposition on November 26, 2019. Dckt. 38. 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, Christopher Michael Chang and Alison Elizabeth Hoyer (“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 November 4, 2019, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Final Ruling: No appearance at the December 10, 2019, hearing is required.

Local Rule 9014-1(f)(2) Objection—Hearing Not Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's attorney November 13, 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.

Upon review of the record, a hearing is not necessary.

<p>The hearing on the Objection to Confirmation of Plan is continued to December 17, 2019 at 2:00p.m.</p>
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The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that the Plan relies on valuing the secured claim of Capital One Auto finance.

DISCUSSION

Debtor filed a Motion (Dckt. 20) seeking to value the secured claim of Capital One, which is set for hearing December 17, 2019. The court shall continue the hearing on this Objection to be heard alongside the motion 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 Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Objection to Confirmation of Plan is continued to December 17, 2019 at 2:00p.m.