UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

December 10, 2019 at 3:00 p.m.

1.	**19-24802-E-13** **CK-5**	**GREGORY/CHO FRENCH** **Catherine King**	**MOTION TO CONFIRM PLAN** **10-21-19 [58]**

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

The Motion to Confirm the Amended Plan is denied.

The debtors, Gregory W French and Cho Y French ("Debtor"), seek confirmation of the Amended Plan. The Amended Plan proposes payment of $4,675.00 for 24 months and $5,795.00 for 36 months, for a total of 60 months, with unsecured creditors being paid 100% dividend. Amended Plan, Dckt. 62. 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 26, 2019, which is discussed below. Dckt. 77.

DISCUSSION

Not Best Effort

The Chapter 13 Trustee alleges that the Plan cannot be confirmed because it violates 11 U.S.C. § 1325(b)(1), which provides:

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

The Amended Plan proposes payment of $4,675.00 for 24 months and $5,795.00 for 36 months, for a total of 60 months, with unsecured creditors being paid 100% dividend. However, Debtor's projected disposable income under 11 U.S.C. § 1325(b)(2) totals $8,654.88.

The Trustee asserts that rather than paying the unsecured claims over 60 months, Debtor can complete this plan in only thirty-seven months. In the Opposition, the Trustee does not close the legal loop as to why paying the amount of the claim as of the commencement of the case in full over 60 months of a plan (with no interest) does not comply with the provisions of 11 U.S.C. § 1325(b)(1).

That provision of the Bankruptcy Code requires that the creditor holding a general unsecured claim be paid not less than the "amount of such claim." As discussed in Collier on Bankruptcy, ¶ 1325.11, this "amount" requires that the "value" of the claim be paid, some courts have concluded that it is not a requirement imposed under this section for the payment of interest. Collier summarizes the rationale of such courts so holding as being that by stating the "amount of such claim," as opposed to the "value of such claim" as of the effective date of the plan, it does not include a present value requirement.

However, a review of annotations to 11 U.S.C. § 1325(b)(1) discloses a number of bankruptcy court decisions concluding that interest is required in the situation where not all projected disposable income is used for the plan payments and the unsecured claims are then extended longer than would otherwise be required if all the projected disposable income was provided. If all disposable income is provided, a debtor can have an "interest free" repayment of the unsecured. But if the debtor elects to "pocket" some of the projected disposable income, the debtor cannot also then have an interest free extension of paying unsecured claims.

The court considers the provisions of 11 U.S.C. § 1325(b)(1) first reading the plain language of the statute as written by Congress. *Hartford Underwriters Insurance Company v. Union Planters Bank, N.A.*, 530 U.S. 1 (2000); *United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 241, 103 L. Ed. 2d 290,

109 S. Ct. 1026 (1989). Here, the statute at issue states:

> (b)
>
> (1) If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, **as of the effective date of the plan**—
>
> > (A) **the value of the property to be** distributed under the plan on account of such claim **is not less than the amount of such claim**; or
> >
> > (B) the plan provides that all of the debtor's projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan.

11 U.S.C. § 1325(b)(1) [emphasis added].

The statute expressly states that the "value" of the property to be distributed is not less than the amount of the unsecured claim. The amount of the unsecured claim is determined as of the commencement of the bankruptcy case. 11 U.S.C. § 502(b), § 506(b).

The plan then provides for distributing property, here money, over the term of the plan on the secured claim. The "value," not just the "amount" of that property distributed over the sixty months of the Plan in this case. The value of something paid over sixty months is not the same value as paid over one month, even thought the "amount" of dollar bills paid is equal. The value adjustment is commonly made in the payment of interest.

Here, Debtor desires to have a sixty month, interest free repayment of the unsecured claims while having an "extra" $8,000+ a month to spend without regard to the Plan. Unless providing for reasonable interest, such term violates 11 U.S.C. § 1325(b)(1).

Thus, the court may not approve the Plan.

Further, a review of Amended Schedule J discloses that Debtor's household includes a daughter, grandson, and "friend." No contribution to income by the daughter or "friend" is provided on Amended Schedule I. Thus, it may be that the projected disposable income is greater than $8,654.88.

This implicates additional requirements of 11 U.S.C. § 1325(a)(3), that the plan has been proposed in good faith; and § 1325(a)(7) that the bankruptcy petition was filed in good faith.

Debtor's Reliance on Motion to Value Secured Claim

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of Toyota Motor Credit. Debtor filed the Motion to Value the Secured Claim of Toyota Motor Credit on September 16, 2019. However, the Motion was denied at the October 22, 2019 hearing. Without this valuation, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

Required Repayment of Retirement Loans

At the Meeting of Creditors, Debtor stated that the correct monthly deduction for the retirement loans is closer to $695.00 per month, rather that the $337.77 listed on Schedule I. Trustee is uncertain as to what the actual amount of the loan payment is and when the loan will end. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Failure to Provide Pay Stubs &Tax Returns

Debtor has not provided the Chapter 13 Trustee with employer payment advices for the sixty-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv); FED. R. BANKR. P. 4002(b)(2)(A). Also, the Chapter 13 Trustee argues that Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A)(i); FED. R. BANKR. P. 4002(b)(3). Debtor has failed to provide all necessary pay stubs and has failed to provide the tax transcript. Those are independent grounds to deny confirmation. 11 U.S.C. § 1325(a)(1).

Failure to File Tax Returns

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

No Middle Name Provided

Debtors have failed to include their middle name on the petition. Debtor asserts that an amended petition front page was filed but no such document is found on the petition, exhibits attached to the present motion, or separately filed. Failure to provide the full name may prevent creditors from identifying these Debtors.

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

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

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

2. 19-26020-E-13 DAMION HRIBIK MOTION TO CONFIRM PLAN
FF-2 Gary Fraley 10-24-19 [23]

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

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

Sufficient Notice Not Provided. No Certificate of Service was filed for the Motion to Confirm Plan.

The Motion to Confirm Plan has not been properly 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 Confirm the Plan is denied without prejudice.

The debtor, Damion Alexander Hribik ("Movant") seeks confirmation of the Chapter 13 Plan. The Plan provides $2,700.00 for 60 months, and a 0% dividend to unsecured claims totaling $25,640.87. Plan, Dckt. 21. 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 26, 2019. Dckt. 27.

INSUFFICIENT NOTICE OF MOTION

It is unknown if notice was provided of this motion since no certificate of service was filed. Federal Rule of Bankruptcy Procedure 2002(a)(6) requires a minimum of twenty-one days' notice of the hearing, and Local Bankruptcy Rule 9014-1(f)(1)(B) requires an additional fourteen days for parties to file written opposition. Those time periods do not run concurrently. Those two minimums total thirty-five days. The court does not know if notice was provided. Therefore, the Motion is denied without prejudice.

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

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

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

IT IS ORDERED that the Motion is denied without prejudice.

THE COURT HAS PREPARED THE FOLLOWING ALTERNATIVE RULING IF APPLICANT PROVIDES SUFFICIENT NOTICE

DISCUSSION

Review of Minimum Pleading Requirements For a Motion (Fed. R. Bankr. P. 9013)

The Supreme Court requires that the motion itself state with particularity the grounds upon which the relief is requested. FED. R. BANKR. P. 9013. The Rule does not allow the motion to merely be a direction to the court to "read every document in the file and glean from that what the grounds should be for the motion." That "state with particularity" requirement is not unique to the Bankruptcy Rules and is also found in Federal Rule of Civil Procedure 7(b).

Consistent with this court's repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, applied the general pleading requirements enunciated by the United States Supreme Court to the pleading with particularity requirement of Bankruptcy Rule 9013. *See* 434 B.R. 644, 646 (N.D. Ala. 2010) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 545 (2007)). The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal* to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court. *See* 556 U.S. 662 (2009).

Federal Rule of Bankruptcy Procedure 9013 incorporates the "state with particularity" requirement of Federal Rule of Civil Procedure 7(b), which is also incorporated into adversary proceedings by Federal Rule of Bankruptcy Procedure 7007. Interestingly, in adopting the Federal Rules of Civil Procedure and of Bankruptcy Procedure, the Supreme Court endorsed a stricter, state-with-particularity-the-grounds-upon-which-the-relief-is-based standard for motions rather than the "short and plain statement" standard for a complaint.

Law and motion practice in bankruptcy court demonstrates why such particularity is required in motions. Many of the substantive legal proceedings are conducted in the bankruptcy court through the law and motion process. These include sales of real and personal property, valuation of a creditor's secured claim, determination of a debtor's exemptions, confirmation of a plan, objection to a claim (which is a contested matter similar to a motion), abandonment of property from the estate, relief from the automatic stay, motions to avoid liens, objections to plans in Chapter 13 cases (akin to a motion), use of cash collateral, and secured and unsecured borrowing.

The court in *Weatherford* considered the impact to other parties in a bankruptcy case and to the court, holding,

> The Court cannot adequately prepare for the docket when a motion simply states conclusions with no supporting factual allegations. The respondents to such motions cannot adequately prepare for the hearing when there are no factual allegations supporting the relief sought. Bankruptcy is a national practice and creditors sometimes do not have the time or economic incentive to be represented at each and every docket to defend against entirely deficient pleadings. Likewise, debtors should not have to defend against facially baseless or conclusory claims.

434 B.R. at 649–50; *see also In re White*, 409 B.R. 491, 494 (Bankr. N.D. Ind. 2009) (holding that a proper motion must contain factual allegations concerning requirements of the relief sought, not conclusory allegations or mechanical recitations of the elements).

The courts of appeals agree. The Tenth Circuit Court of Appeals rejected an objection filed by a party to the form of a proposed order as being a motion. *St. Paul Fire & Marine Ins. Co. v. Continental Casualty Co.*, 684 F.2d 691, 693 (10th Cir. 1982). The Seventh Circuit Court of Appeals refused to allow a party to use a memorandum to fulfill the pleading with particularity requirement in a motion, stating:

> Rule 7(b)(1) of the Federal Rules of Civil Procedure provides that all applications to the court for orders shall be by motion, which unless made during a hearing or trial, "shall be made in writing, [and] *shall state with particularity the grounds therefor*, and shall set forth the relief or order sought." The standard for "particularity" has been determined to mean "reasonable specification."

Martinez v. Trainor, 556 F.2d 818, 819–20 (7th Cir. 1977) (citing 2-A JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶ 7.05 (3d ed. 1975)).

Not stating with particularity the grounds in a motion can be used as a tool to abuse other parties to a proceeding, hiding from those parties grounds upon which a motion is based in densely drafted points and authorities—buried between extensive citations, quotations, legal arguments, and factual arguments. Noncompliance with Federal Rule of Bankruptcy Procedure 9013 may be a further abusive practice in an attempt to circumvent Bankruptcy Rule 9011 by floating baseless contentions to mislead other parties and the court. By hiding possible grounds in citations, quotations, legal arguments, and factual arguments, a movant bent on mischief could contend that what the court and other parties took to be claims or factual contentions in the points and authorities were "mere academic postulations" not intended to be representations to the court concerning any actual claims and contentions in the specific motion or an assertion that evidentiary support exists for such "postulations."

Motion and Declaration Insufficient

Trustee argues that the motion fails to plead with particularity the grounds upon which the requested relief is based. Further, Trustee contends that the declaration filed in support of the motion to confirm is insufficient as it does not provide sufficient evidence in support of confirmation and merely states the components of 11 U.S.C. § 1325(a).

Grounds Stated in Motion

Movant has not provided any grounds, merely unsupported conclusions of law. The insufficient statements made by Movant are:

A. The Chapter 13 Plan has been proposed in good faith.

B. Under the terms of the Chapter 13 Plan, the Debtor will paying an average of $2,700.00 for 60 months.

C. The Plan proposes to pay the allowed unsecured claims an amount not less that they would have been paid if the estate of the Debtor was liquidated under the provisions of 11 U.S.C. § Chapter 7.

Those "grounds" are merely a conclusion of law by Movant. Presumably, Movant believed that the court would make those conclusions, but the "grounds" cannot merely state the anticipated conclusions.

Movant is reminded that "[f]ailure of counsel or of a party to comply with these [Local Bankruptcy] Rules . . . may be grounds for imposition of any and all sanctions authorized by statute or rule within the inherent power of the Court, including without limitation, **dismissal of any action**, entry of default, finding of contempt, imposition of monetary sanctions or attorneys' fees and costs, and other lesser sanctions." LOCAL BANKR. R. 1001-1(g) (emphasis added).

ADDITIONAL OBJECTIONS FROM TRUSTEE

Not Best Effort

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

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

Trustee asserts that Debtor understated his income. At the Meeting of Creditors, Debtor admitted that he earns more income than is stated on Schedule I. Schedule I lists Debtor's monthly gross income at $2,389.56 and includes $700.00 in overtime income, yielding a monthly gross income from employment of $3,089.56.

Debtor appears to be paid on a bi-weekly basis per his pay advices. According to Debtor's August 9, 2019 pay advice, he earns $29.00 per hour, or $2,320.00 per pay period, if working a full 80 hours per pay period. Based on a bi-weekly pay period, Debtor earns approximately $5,026.67 per month. This does not take into account any overtime income the Debtor earns on a monthly basis.

Failure to File Tax Returns

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

Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor's Schedule I includes a contribution from his significant other in the amount of $1,900.00 per month but the declaration filed as part of this motion states that Debtor's significant other contributes $1,500.00 a month towards household expenses. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

The Plan does not comply with 11 U.S.C. §§ 1322, 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, Damion Alexander Hribik ("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 Chapter 13 Plan is denied without prejudice.

3. 19-25222-E-13 PAMELA AMBUNAN MOTION TO CONFIRM PLAN
PGM-1 Peter Macaluso 10-28-19 [27]

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

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

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

The debtor, Pamela Discipulo Ambunan ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for $1,000.00 to be paid starting October 25, 2019 for 20 months then an increase to $1,400.00 for 39 months, and a 100% dividend to unsecured claims totaling $51,84175. Amended 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 December 2, 2019. Dckt. 43.

DISCUSSION

Failure to Complete Plan Within Allotted Time

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Chapter 13 Trustee, the Plan will complete in 93 months due to unsecured claims now total $95,780.39, a $43,983.64 increase than the stated $51,841.75 in Class 7 of the Amended Plan. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

Uncertainty as to Plan Payments

The Motion to Confirm and the Amended Plan state plan payments of $1,350.00 for one month, followed by $1,000.00 for 20 months, and then $1,400.00 for 39 months. However, Debtor's declaration states a monthly plan payment of $1,630.00 for the last 39 months of the Plan based on the expiration of the BMW lease. Thus, the Trustee is uncertain as to what the Plan payments are.

Unexplained Reduction in Expenses

The Amended Schedule J reflects a decrease from $200.00 to $100.00 for home maintenance; $1,300.00 to $900.00 for food and housekeeping supplies; $350.00 to $250.00 for clothing; $400.00 to $200.00 for personal care; and $180.00 to $50.00 for entertainment. Further, Debtor amended Schedule J to reflect a lease payment of $1,129.96, which she states in her Declaration that once she is done with this lease she will increase her plan payment to $1,630.00 for the balance of the Plan. Absent explanation from Debtor as to how the proposed drastic decrease in expenses will be achieved, the court does not believe that Debtor's projection is in good faith. That is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(3).

Failure to Provide for a Secured Claim

Trustee correctly asserts that Golden 1 Credit Union filed a secured Claim 2-1 on August 28, 2019, on a deed of trust in the amount of $24,960.14. Debtor's Amended Schedule D estimates the amount of Creditor's claim as $24,000.00. The Plan does not provide for treatment of this secured claim.

11 U.S.C. § 1322(a) is the section of the Bankruptcy Code that specifies the mandatory provisions of a plan. It requires only that a debtor adequately fund a plan with future earnings or other future income that is paid over to the Chapter 13 Trustee (11 U.S.C. § 1322(a)(1)), provide for payment in full of priority claims (11 U.S.C. § 1322(a)(2) & (4)), and provide the same treatment for each claim in a particular class (11 U.S.C. § 1322(a)(3)). Nothing in § 1322(a) compels a debtor to propose a plan that provides for a secured claim, however.

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

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

A. Provide a treatment that the debtor and creditor agree to (11 U.S.C. § 1325(a)(5)(A)),

B. Provide for payment in full of the entire claim if the claim is modified or will mature by its terms during the term of the Plan (11 U.S.C. § 1325(a)(5)(B)), or

C. Surrender the collateral for the claim to the creditor (11 U.S.C. § 1325(a)(5)(C)).

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

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

Notwithstanding the absence of a requirement in 11 U.S.C. § 1322(a) that a plan provide for a secured claim, the fact that this Plan does not provide for Creditor's secured claim raises doubts about the Plan's feasibility. *See* 11 U.S.C. § 1325(a)(6). That is reason to deny confirmation.

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

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

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

4.	**19-21325-E-13 BLG-1**	**DEYANIRA MANZANARES Chad Johnson**	**OBJECTION TO CLAIM OF OCWEN LOAN SERVICING, LLC, CLAIM NUMBER 8 10-22-19 [17]**

APPEARANCES OF THERON S. COVEY, ESQ. AND ERIC P. ENCISO, ESQ. REQUIRED FOR DECEMBER 10, 2019 HEARING

TELEPHONIC APPEARANCES PERMITTED

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

Local Rule 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, parties requesting special notice, and Office of the United States Trustee on October 29, 2019. By the court's calculation, 42 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

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

The Objection to Proof of Claim Number 8 of Ocwen Loan Servicing, LLC is sustained.

Deyanira Manzanares, Chapter 13 Debtor, ("Objector") requests that the court disallow part of the claim of Ocwen Loan Servicing ("Creditor"), Proof of Claim No. 8 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of $348,170.88. Objector asserts that part of this claim, an amount of $1,974.98 listed as the default amount as of the date of the petition, which Creditor asserts must be cured in the bankruptcy plan, is not pre-petition arrearage.

Creditor's Response

On October 29, 2019, Creditor Deutsche Bank National Trust Company (as Trustee for Ocwen Loan Servicing) filed a response to Debtor's Objection. Dckt. 23. Creditor provides a very forceful and strident Opposition, asserting that the Objection to the claim as stated in Proof of Claim No. 8 is without merit.

The Opposition basis is summarized as follows:

A. Debtor's bankruptcy case was filed on March 4, 2019. Opposition ¶ 6; Dckt. 23.

B. Creditor's Proof of Claim No. 8 was filed on May 2, 2019. *Id.*, ¶ 7.

C. On Proof of Claim No. 8 Creditor states that the pre-petition arrearage is $1,974.98. *Id.*

1. The arrearage consists of one principal and interest payment of $1,880.93 and a pre-petition fees of $94.05. *Id.*, ¶ 8.

D. Proof of Claim 8 "indicates" that Debtor failed to make the pre-petition payment that was due on March 1, 2019. *Id.*

The court notes that Proof of Claim No. 8-1 does not merely "indicate," that there is an unpaid amount of $1,974.98 that was due pre-petition, but states under penalty of perjury and subject to the certifications made under Federal Rule of Bankruptcy Procedure 9011 that, as of May 2, 2019, the:

Amount necessary to cure any default as of the date of the petition: $ 1974.98

Proof of Claim 8-1, § 9. Thus, as of May 2, 2019, Creditor states under penalty of perjury there was unpaid $1,974.98, and that payment of the $1,974.98 was required to be made under any Chapter 13 plan, in addition to the current post-petition payments. As addressed below, this statement under penalty of perjury was inaccurate and would result in Creditor improperly being paid the $1,974.98 twice.

E. Because a proof of claim is given *prima facie* evidentiary value, Debtor's evidence that Debtor timely paid $2,473.85 on March 11, 2019, is insufficient to show that a pre-petition arrearage for the March 2019 payment did not exist when Creditor filed its proof of claim on May 2, 2019 and stated under penalty of perjury that the March 2019 payment had not been made by Debtor. *Id.*, p. 3:8-28, 4:1-13.

F. Creditor applied the $2,473.85 made on March 11, 2019, as a "post-petition payment." *Id.*, p. 4:11-12.

G. Therefore, because Creditor applied the timely payment for March 2019 as a post-petition payment, Creditor has maintained a pre-petition delinquency to assert when Creditor filed its proof of claim on May 2, 2019 – **Which Was Twenty-One (21) Days After Creditor Timely Received The March 2019 Payment**. *Id.*, p: 12-13

H. Therefore, it is proper to state under penalty of perjury that as of May 2, 2019 there was a pre-petition default that remained to be cured - notwithstanding Creditor having been timely paid the March 2019 regular payment of $2,473.85. *Id.*

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, Debtor presents uncontradicted evidence that on March 11, 2019, Debtor timely paid the $2,473.85 regular monthly payment due Creditor for March 2019. Debtor provides both testimony and documentary evidence. Dckts. 19, 20. Not only does Creditor not contradict this evidence, Creditor admits in the Opposition that the payment was received by Creditor on March 11, 2019. Opposition, p. 4:11-12; Dckt. 23.

What Creditor appears to argue is that when it stated under penalty of perjury on May 2, 2019, that there was a $1,974.98 that was necessary to be cured (Proof of Claim No. 9-1, § 9), it could so state under penalty of perjury because it could elect to treat it as a "post-petition payment" and not correctly apply it as a timely payment under the Note. No authority is given for Creditor to not properly apply the payment so as to create a pre-petition arrearage that it could then demand be paid under any Chapter 13 plan.

Creditor is a sophisticated creditor that appears in bankruptcy cases regularly in this District. Creditor has engaged knowledgeable bankruptcy counsel to represent it in this case. [FN. 1]

FN. 1. A search of the court's files discloses that Creditor's counsel Theron Covey appears as counsel in one hundred seventy-five (175) cases (dating back to 2008) and co-counsel Eric Enciso appears as counsel in only five cases (including this one). The State Bar reports that Mr. Enciso was licensed as an attorney in June 2017. http://members.calbar.ca.gov/fal/Licensee/Detail/315605.

Creditor and counsel well know that the bankruptcy plan in the Eastern District of California has long provided that a creditor's proof of claim controls as to the amount of claim and any arrearage, absent an order of the court. The Chapter 13 Plan filed in this case on March 4, 2019 - one month before Proof of Claim No. 8-1 was flied, expressly states:

Section 3. Claims and Expenses
A. Proofs of Claim
. . .

3.02. **The proof of claim,** not this plan or the schedules, **shall determine the amount and classification of a claim** unless the court's disposition of a claim objection, valuation motion, or lien avoidance motion affects the amount or classification of the claim.

. . .

C. Secured Claims

3.07. **Class 1 includes all delinquent secured claims that mature after the completion of this plan**, including those secured by Debtor's principal residence.

(a) Cure of defaults. **All arrears on Class 1 claims shall be paid in full by Trustee**. The equal monthly installment specified in the table below as the "arrearage dividend" shall pay the arrears in full.

Plan, Dckt. 2 (emphasis added).

Thus, Creditor and its counsel know, and knew not only when Proof of Claim No. 8-1 was filed but when it filed the Opposition, that by placing and continuing to assert that there was a pre-petition arrearage in Proof of Claim No. 8-1 Creditor was demanding the payment of an additional 1,974.98 as part of any Chapter 13 Plan. This would provide for a double payment of the principal and interest for March 2019.

No basis has been shown by Creditor that it is entitled to be paid the principal and interest due on the Note that is the basis of the claim for March 2019. Such contention is without merit.

Even after receiving the Objection and counsel having evidence that payment was timely made in March 2019, rather than merely amending Proof of Claim No. 8-1 to remove the statement that there was an outstanding arrearage that had to be cured, Creditor plowed ahead with the Opposition asserting the right to double payment.

The Objection is sustained. The plain language of the proof of claim states "amount necessary to cure any default as of the date of the petition." At that time, March 4, 2019, there was no default because the contract between Debtor and Creditor provides for approximately 15 days before the payment is considered in default. Further, Debtor made the payment on March 11, 2019. Creditor filed their proof of claim on May 2, 2019, with an execution date of April 25, 2019. At that time, Creditor had already received payment and would have been reflected in the loan payment history.

Based on the evidence before the court, Creditor's claim is disallowed as to the amount of $1,974.98. The Objection to the Proof of Claim is sustained.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Ocwen Loan Servicing ("Creditor"), filed in this case by Deyanira Manzanares, Chapter 13 Debtor, ("Objector") having been

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

IT IS ORDERED that the Objection to Proof of Claim Number 8 of Creditor is sustained, and the claim is disallowed as to the amount of $1,974.98 stated as "an amount necessary to cure any default as of the date of the petition:"

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.

5. 19-26228-E-13 AP-1 | **ALBERT FAHNESTOCK** **Joseph Sandbank** | **OBJECTION TO CONFIRMATION OF PLAN BY BAYVIEW LOAN SERVICING, LLC** **11-14-19 [17]**

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 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 **----------**.

The Objection to Confirmation of Plan is sustained.

Bayview Loan Servicing, LLC ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

A. Debtor's Plan fails to provide for a cure of Creditor's pre-petition claim in full.

B. Debtor lacks adequate disposable income to fund the Chapter 13 Plan proposed.

DISCUSSION

Creditor's objections are well-taken.

Failure to Cure Arrearage of Creditor

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts $27,527.25 in pre-petition arrearage. Debtor's plan lists only $22,693.31 for the Class 1 Plan treatment, but it is the Creditor's Proof of Claim that controls the amount. Plan, Section 3.A. ¶ 3.02. Thus, the Plan does provide for curing the stated $27,527.25. However, the question exists whether the Plan is adequately funded for this arrearage.

The Proposed Chapter 13 Plan requires a monthly plan payment of $1,885.00. Plan ¶ 2.01; Dckt. 2. In addition to the Chapter 13 Trustee fees, estimated at $131.95 ($1,885.00 x 6%) and $33.33 in Debtor's attorney's fees ($2,000 averaged over 60 months if counsel were stretched out over entire plan). That leaves $1,719.72. The court estimates the over/(under) funding of the proposed plan with the pre-petition arrearage as set forth in Creditor's proof of claim as follows:

Plan Payment for Disbursed on Creditor Claims	$1,719.72
Creditor Current Post-Petition Payment	($1,230.67)
Creditor Arrearage Payment $27,527.25/Sixty Months	($ 458.79)
Priority Claim Payment $3,997.00/Sixty Months	($ 66.62)
General Unsecured Claim Dividend $11,756.00 x 0.00% dividend	($ 0.00)
Over/(Under Funding) of Plan	($ 36.36)

As currently funded, the proposed Plan is short a modest ($36.36) a month to be properly funded. While a modest amount, the ability of Debtor to amend the plan to provide for this amount is in question as discussed below.

Failure to Afford Plan Payment

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor's Schedule J indicates that the Debtor has disposable income of $1,886.50 per month. The proposed Plan payment is in the amount of $1,885.00.

To get to the $1,886.50 of projected disposable income, there are some questionable expenses on Schedule J filed in this case. On Schedule J Debtor states that his expenses include:

Food and Housekeeping Supplies.....($250)

If the court allows $50 a month for housekeeping supplies, Debtor has only $200 a month for food. In a thirty-day month, that provides only $2.22 per meal for Debtor. This appears to be an unrealistic amount.

Transportation.....($150)

This includes all gas, maintenance, repairs and registration. On Schedule A/B Debtor states that he own two vehicles, a 2004 Dodge Ram and a 2005 Honda Motorcycle. Dckt. 1. On Schedule J Debtor lists ($75) a month for vehicle insurance for the two vehicles. These vehicles are more than fifteen model years old, which indicates that there will be more than minor maintenance, even if the Debtor does it himself. The ($150) expense, when gas is running $3.50 a gallon, does not appear realistic.

When taking into consideration that Debtor will need to increase the Plan payments by approximately $36.36 in order to provide for Creditor's pre-petition arrearage, Debtor lacks the sufficient monthly disposable income to fund the Plan.

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

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

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

6. 19-26029-E-13 DPC-1 | **DEBRA THOMPSON** Ted Greene | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK 11-19-19 [24]**

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 19, 2019. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. Debtor filed an incomplete plan.

B. Debtor failed to provide pay advices and tax returns.

C. Debtor failed to disclose an asset.

D. Debtor is a serial filer.

DISCUSSION

Trustee's objections are well-taken.

Incomplete Plan

11 U.S.C. § 1325(a)(1) provides for confirmation of a plan if it complies with Chapter 13 provisions and other applicable Code provisions. Debtor has proposed a plan that is woefully lacking in compliance with the Bankruptcy Code. Debtor failed to propose a plan payment as Section 2.01 states $0.00 for 0 months. Further, Section 3.05 fails to provide the information on attorney's fees. (Debtor filed a Rights and Responsibilities listing total fees of $4,000.00. Dckt. 18.)

Under Section 3.08 Class 2 Claims, Debtor includes the following: Class 2(A) for Progressive Leasing, Class 2(B) for Exter / 2014 ES350 Lexus, and Class 2(B) for Purchasing Power / Misc. Household Goods. However, all are listed with a 0.00% interest rate and 0.00 monthly dividend.

Blank Form 122C-1

11 U.S.C. § 1325(a)(6) provides for confirmation of a plan if Debtor will be able to make all payments under the plan and to comply with the plan. Debtor's Form 122C-1 was left blank and must be filled out properly.

Combined Pay Stubs &Tax Returns

Debtor has not provided Trustee with employer payment advices for the sixty-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv); FED. R. BANKR. P. 4002(b)(2)(A). Also, Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A)(i); FED. R. BANKR. P. 4002(b)(3). Debtor has failed to provide all necessary pay stubs and has failed to provide the tax transcript. Those are independent grounds to deny confirmation. 11 U.S.C. § 1325(a)(1).

Failure to Disclose All Assets

11 U.S.C. § 1325(a)(1) provides for confirmation of a plan if it complies with Chapter 13 provisions and other applicable Code provisions. On October 25, 2019, Creditor Westlake Financial Services filed Claim 6-1 in the amount of $19,108.39 secured by a lien in a 2010 Mercedes Benz C-Class vehicle. The attached contracts states the vehicle as purchased on August 9, 2019. Debtor filed the current case on September 26, 2019 but neither the vehicle or the expense are listed on the Schedules or the Plan. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Multiple Bankruptcy Filings

Trustee notes that Debtor has filed four bankruptcy cases since April 2018. For the three filings prior to the current case that have been unsuccessful prosecuted, Debtor was represented by the same attorney that filed this case. (New counsel substituted in as counsel for this Debtor on December 5, 2019.)

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

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

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

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

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

7.	**19-25930-E-13 AP-1**	**RUDY/FELICIDAD ORPILLA Mark Wolff**	**OBJECTION TO CONFIRMATION OF PLAN BY J.P. MORGAN MORTGAGE ACQUISITION CORP 11-14-19 [36]**

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 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 ----------.

The Objection to Confirmation of Plan is sustained.

J.P. Morgan Mortgage Acquisition Corp. ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

A. Debtor's Plan fails to cure Creditor's pre-petition arrearage in the amount of $3,840.90.

Trustee's Response

On November 26, 2019, Trustee filed a response to Creditor's Objection. Dckt 40.

DISCUSSION

Creditor's and Trustee's objections are well-taken.

Failure to Cure Arrearage of Creditor

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts $3,840.90 in pre-petition arrearage. The Plan does not propose to cure those arrearage. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearage.

Failure to Afford Plan Payment

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Trustee argues that Debtor income is insufficient to fund the plan. Debtor's Amended Plan calls for payments of $900.00 per month for 60 months. Debtor's Amended Schedule I lists monthly net income of $13,888.56, and Debtor lists monthly expenses on Schedule J in the amount $13,258.00, leaving a net income of $630.56.

Amended Plan Filed

On November 7, 2019, Debtor filed an Amended Plan. Dckt. 28. No motion to confirm the Amended Plan has been filed. Therefore, the Amended Plan is not now before the court.

The Objection is overruled as moot, there being no plan being considered for confirmation.

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 Confirmation of Plan having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is overruled as moot, Debtor having filed an amended plan and there being no motion to confirm the amended plan before the court.

8. **19-25843-E-13 PGM-1** | **JERLINE WALLACE** **Peter Macaluso** | **MOTION TO VALUE COLLATERAL OF FORD MOTOR CREDIT COMPANY, LLC 11-7-19 [27]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditor, parties requesting special notice, 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). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Value Collateral and Secured Claim of Ford Motor Credit Company, LLC ("Creditor") is $9,735.00, and Creditor's secured claim is determined to have a value of $9,735.00.

The Motion filed by Jerline Wallace ("Debtor") to value the secured claim of Ford Motor Credit Company, LLC ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 29. Debtor is the owner of a 2011 Lincoln Navigator ("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).

Creditor's Opposition

On November 15, 2019, Creditor filed an Opposition to the Motion to Value Collateral the Secured Claim. Dckt. 40. Creditor argues that the Vehicle should be valued at $10,785.20. Additionally, Creditor contends that Debtor should have submitted a NADA or Blue Book report to support the contentions she makes regarding the condition of the Vehicle.

Trustee's Non-Opposition

Trustee David Cusick, ("the Chapter 13 Trustee") filed a Response to Debtor's Motion on November 26, 2019. Dckt. 50. The Chapter 13 Trustee does not oppose Debtor's valuation and he indicates that the Vehicle is included in Class 2(B) and that Creditor is included on Schedule D. Dckt. 52.

Debtor's Reply

Debtor filed a Reply to Creditor's Opposition on December 3, 2019. Dckt. 60. Debtor argues Creditor's evidence is hearsay and therefore inadmissable but Debtor's valuation is based on personal knowledge of the Vehicle and thus is admissible.

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on December 10, 2013, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $10,785.20. Proof of Claim, No. 6.

Creditor argues that the Vehicle should be valued at $10,785.20. Creditor provided a copy of the NADA Valuation Report for the Vehicle. The Report has been properly authenticated and is accepted as a market report or commercial publication generally relied on by the public or by persons in the automobile sale business. FED. R. EVID. 803(17). According to Creditor's NADA report, the vehicle has a retail value of $12,325.00. This is a higher value than Debtor's debt. Creditor requests that the secured claim be valued at the balance owed of $10,785.20.

Debtor argues that her opinion is lay testimony properly presented to determine the value of the Vehicle. Debtor's declaration provides details as to the condition of the Vehicle. Debtor further argues that Creditor's NADA is not admissible but as explained above, the report was properly authenticated and it is accepted as a publication through which a Creditor can rely on for valuation purposes.

This court has previously explained many times, a Debtor's opinion of value is evidence, even if it is of the most ephemeral essence. Debtor has been driving the car since 2011. She describes that the Vehicle requires repairs. Debtor specifies that it is her opinion. She does not claim to be an expert. Thus, her opinion is evidence.

With respect to this issue of what a lay person may testify to as it relates to the value of property, the court notes the following from 4 WEINSTEIN'S FEDERAL EVIDENCE:

A. The testimony is to be based on the witnesses personal perception. 4 WEINSTEIN'S FEDERAL EVIDENCE, § 701.03[1]. Here, Debtor states only her opinion of value.

B. Homeowners and owners and officers of a business are allowed to offer lay opinions about the value of the home or business. *Id.*

C. Such opinion must be one that a normal person would form from the perceptions at issue. *Id.*, [2].

D. The owner is not to merely repeat the valuation of somebody else. *Id.*, [3].

E. The opinion must not be based on scientific, technical, or other specialized knowledge. *Id.*, [4](a).

F. Lay opinion must not be expert testimony in disguise. *Id.*, [4])b.

This principle of an owner testifying as to the value of the property is extensively reviewed by the United States District Court in *United States ex rel. TVA v. An Easement & Right-Of-Way over 6.09 Acres of Land*, 140 F. Supp. 3d 1218, 1239-1240 (N.D. Alabama 2015), stating:

> A long line of precedent establishes a general rule in this circuit that "an owner of property is competent to testify regarding its value." *Neff v. Kehoe*, 708 F.2d 639, 644 (11th Cir. 1983); *see also Hessen for Use & Benefit of Allstate Ins. Co. v. Jaguar Cars, Inc.*, 915 F.2d 641, 646 (11th Cir. 1990); *Gregg v. U.S. Indus., Inc.*, 887 F.2d 1462, 1469 (11th Cir. 1989); *Electro Servs., Inc. v. Exide Corp.*, 847 F.2d 1524, 1526 (11th Cir. 1988); *T.D.S., Inc. v. Shelby Mut. Ins. Co.*, 760 F.2d 1520, 1533 (11th Cir. 1985); *J & H Auto Trim Co. v. Bellefonte Ins. Co.*, 677 F.2d 1365, 1369 (11th Cir. 1982); *Dietz v. Consolidated Oil & Gas, Inc.*, 643 F.2d 1088, 1094 (5th Cir. April1981); *South Central Livestock Dealers, Inc. v. Security State Bank of Hedley, Tex.*, 614 F.2d 1056, 1061 (5th Cir. 1980); *Meredith v. Hardy*, 554 F.2d 764, 765 (5th Cir. 1977); *Kestenbaum v. Falstaff Brewing Corp.*, 514 F.2d 690, 698-99 (5th Cir. 1975); *Berkshire Mut. Ins. Co. v. Moffett*, 378 F.2d 1007, 1011 (5th Cir. 1967). The owner is generally presumed to be qualified to give such an opinion based on "his ownership alone." *Moffett*, 378 F.2d at 1011; *see also United States v. 68.94 Acres of Land, More or Less, Situate in Kent Cnty., State of Del.*, 918 F.2d 389, 397 (3d Cir. 1990) ("[T]he owner is deemed to have sufficient knowledge of the price paid, the rents or other income received, and the possibilities of the land for use, to render an opinion as to the value of the land." (quoting *Nichols* on Eminent Domain § 23.03 at 23-30 (1990) (citations omitted)); *United States v. 329.73 Acres of Land, Situated in Grenada & Yalobusha Counties, State of Miss.*, 666 F.2d 281, 284 (5th Cir. 1982) ("[O]pinion testimony of a landowner as to the value of his land is admissible without further qualification. Such testimony is admitted because of the presumption of special knowledge that arises out of ownership of the land." (citations omitted)); *LaCombe v. A-T-O, Inc.*, 679 F.2d 431, 434 (5th Cir. 1982); *Christopher Phelps & Associates, LLC v. Galloway*, 492 F.3d 532, 542 (4th Cir. 2007); *United States v. 10,031.98 Acres of Land, More or Less, Situate in Las Animas Cnty., Colo.*, 850 F.2d 634, 636 (10th Cir. 1988); *District of Columbia Redevelopment Land Agency v. Thirteen Parcels of Land*, 534 F.2d 337, 339, 175 U.S. App. D.C. 135 (D.C. Cir. 1976). In fact, the Eleventh Circuit has gone so far as to suggest that a witness's opinion of value of his personal property is generally admissible even if "self-serving and unsupported by other evidence." *Neff,* 708 F.2d at 644 (quoting *J & H Auto Trim Co.*, 677 F.2d at 1369). Similarly, our court of appeals has rejected arguments contesting the admissibility of an owner's testimony on the value of his property on the ground that it lacks a sound basis, concluding that such matters go only to the weight of the testimony and thus are to be challenged through cross-examination and refuting evidence. *See Gregg*, 887 F.2d at 1469; *Electro Services, Inc.*, 847 F.2d at 1526-27; *Neff*, 708 F.2d at 644; *J & H Auto Trim Co.*, 677 F.2d at 1369; *Meredith*, 554 F.2d at 765; *see also 329.73 Acres of Land, Situated in*

> *Grenada & Yalobusha Counties, State of Miss.*, 666 F.2d at 284 ("[A]ppellant attacks the probative value of [the landowner's] testimony on the grounds that it was not based on any accepted method of valuation, but this overlooks the fact that the opinion testimony of a landowner as to the value of his land is admissible without further qualification.").

Creditor's contention that Debtor's opinion of value is inadmissible and that she should have submitted a publication or report because Debtor does not provide an analysis (as an expert would) of how Debtor reached that opinion is without merit. Creditor is correct that a better valuation would be based on a commercial publication such as NADA guide or Kelley Blue Book report but is incorrect in stating that Debtor's testimony is not evidence.

Creditor presents a NADA report valuing the vehicle at an estimated $12, 325.00. This is the value for a showroom ready vehicle. Debtor testifies that the vehicle has approximately 170,214 miles reading on the odometer. Further, the right front side over the tire is damaged and that there are dings on the right front and rear doors. Declaration, Dckt. 29.

The Bankruptcy Code requires that this court determine in a Chapter 7 or Chapter 13 case that the value of a personal property for personal or family use shall be "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." 11 U.S.C. § 506(a)(2).

Creditor provides the court with the $12,325.00 retail sale value for the vehicle if it were showroom, retail seller ready. However, the statute mandates that the court must consider the age and condition of the property. Here, Debtor provides her testimony (which is uncontradicted by Creditor) that:

A. The right front side over tire damages.

B. Dings in right front and read door.

Declaration ¶ 6, Dckt. 29.

As creditor notes, the court is not provided with additional evidence in the form of photographs. Such would have been helpful. The court will consider the testified to damage as being modest.

After considering the testified to damage, the court concludes that the retail value is $9,735.00 for the vehicle in its existing condition.

The lien on the Vehicle's title secures debt owed to Creditor with a balance of approximately $10,785.20. Proof of Claim, No. 6. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of $9,735.00, 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 Jerline Wallace ("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 Ford Motor Credit Company, LLC ("Creditor") secured by an asset described as 2011 Lincoln Navigator ("Vehicle") is determined to be a secured claim in the amount of $9,735.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $9,735.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

9. 19-25945-E-13 DPC-1 — CHARLENE OJASCASTRO, Richard Jare — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK, 11-13-19 [25]

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 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 ----------.

The Objection to Confirmation of Plan is sustained.

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

A. Plan includes additional provisions that improperly attempt to alter the rights of a claim secured by an interest in Debtor's principal residence.

B. Under a totality of the circumstances test, Debtor's plan seems to not be in good faith.

DISCUSSION

Trustee's objections are well-taken.

Ensminger Provision

The Plan includes additional provisions that improperly attempt to alter the rights of a claim secured by an interest in Debtor's principal residence that seem contrary to 11 U.S.C. § 1322(b)(2). Additionally, Trustee points out that the provisions included are not in the same order as they are authorized to be listed and there is additional language that is not normally part of the authorized language.

With respect to the Freedom Mortgage Corporation claim, the proposed terms of the Additional Provisions in the Plan (Dckt. 3 at 7) include:

A. Monthly Adequate Protection payment of $2,460.48, which is allocated $875.58 for taxes and insurance, and $1,584.90 for post-petition interest and principal, will be paid through the Plan.

B. Debtor will pursue a loan modification.

C. If the loan modification requires cure payments to be made during the term of the Chapter 13 Plan, the arrearage payments and current monthly payment will be made as Class 1 secured claim payments.

D. If the modified payments can be made without altering the unsecured claim distribution, no modification of the plan will be required.

E. Communication of the denial of the loan modification by First Class mail to both the Debtor and Debtor's counsel is required.

F. Reference is made to a Paragraph 6.03 providing for "termination of the automatic stay," however, paragraph 6.03 of the plan provides:

> 6.03. Post-Petition claims. If a proof of claim is filed and allowed for a claim of the type described in 11 U.S.C. § 1305(a), this plan may be modified to provide for such claim.

This may be a mere clerical error in the cross reference.

Dckt. 3 at 7-9.

The Trustee's opposition addresses specific points as to how these provisions are structured. At the hearing, **xxxxxxxxxxxxxxxx**

Good faith and Totality of the Circumstances Test

Trustee argues that Debtor's plan was not submitted in good faith. Specifically, Trustee asserts the following factors for the court to examine:

1. the amount of the proposed payments and the amounts of Debtor's surplus;

2. the accuracy of the plan's statements of the debts, expenses, and percentage of repayment of unsecured debt, and whether any inaccuracies are an attempt to mislead the court;

3. the extent to which the secured claims are modified;

4. the frequency in which Debtor has sought relief under the Bankruptcy Reform Act;

5. the motivation and sincerity of Debtor in seeking Chapter 13 relief; and

6. The burden which the plan's administration would place upon the Trustee.

Due to the failed prior multiple cases, the Trustee computes that there is $12,350.00 of monthly disposable income that Debtor failed to pay in the prior case that has not been accounted for in this case. These are five monthly payments of $2,270 that the Debtor failed to pay the Chapter 13 trustees in the prior case. Given Debtor's and non-debtor's spouse's stable income, this raises a significant good faith issue.

Reviewing the Statement of Financial Affairs, there are no pre-petition transfers or payments disclosed that would consume that $12,350.00. Statement of Financial Affairs Questions 6, 7, 8, 13, 14. Dckt. 21.

With the missing $12,350.00 while Debtor was under the protection of the prior case and this case raises the specter of not being in good faith while obtaining the benefits under the Bankruptcy Code. This is grounds to deny confirmation.

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.

10. 19-26157-E-13 DPC-2 | **VILIAMI/PATRICIA FONUA Mohammad Mokarram** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 11-20-19 [16]**

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the 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. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing ----------.

The Objection to Confirmation of Plan is sustained.

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

A. Debtor failed to list a business expense.

B. Debtor failed to file 2014 tax return.

C. Debtor failed to provide all business documents.

DISCUSSION

Trustee's objections are well-taken.

Unlisted Rental Expense

Debtor admitted at the Meeting of Creditors that he rents a truck for the operation of the business from Atlas Van Lines or Penske. No tax deduction nor tax expense appears on Schedule I, J, or the detailed business statement. No truck rental is listed.

Failure to File Tax Returns

Debtor admitted at the Meeting of Creditors that the federal income tax return for the 2014 tax year has not been filed still. Filing of the return is required. 11 U.S.C. §§ 1308, 1325(a)(9). Failure to file a tax return is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Failure to File Documents Related to Business

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

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

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

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.

11. 19-26957-E-13 MS-2 | **MARK HAYNES** **Mark Shmorgon** | **MOTION TO VALUE COLLATERAL OF LOVACRES RANCH** **11-7-19 [13]**

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

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

Below is the court's tentative ruling.

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

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

The Motion to Value Collateral and Secured Claim of Lovacres Ranch ("Creditor") is denied without prejudice.

The Motion filed by Mark Haynes ("Debtor") to value the secured claim of Lovacres Ranch ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 15. Debtor is 100% owner of six (6) horses and 50% owner of two (2) horses, for a total of eight horses at Lovacres Ranch ("Property"). Debtor seeks to value the Property at a replacement value of $21,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

On November 21, 2019, Trustee filed a Response. Trustee does not oppose this Motion to Value as Debtor provides for the claim in his plan and is listed on Debtor's Schedule D. Dckt. 24.

As of December 9, 2019, Creditor has not filed a proof of claim, nor an Opposition to this Motion.

The Motion states with particularity that the lien to be avoided is one that exists and has been perfected by – No allegations provided as to there being a lien, the basis for the lien, the obligation secured by the lien, and the perfection of the lien.

In his Declaration, the Debtor provides legal expert testimony that there is a "California Livestock secured lien" (the court is unsure as to Debtor's legal expert testimony of there being a "secured lien," as opposed to an "unsecured lien."

Nothing has been presented to the court that Debtor is a legal expert and has the ability to provide expert witness testimony as to the law (to the extent that such is proper testimony as opposed to legal arguments and points and authorities materials presented by counsel for a party). F.R.E. 702, 703.

While stating that Debtor wants to "give" a secured claim for $21,000.00 to Lovacres Ranch, he does not provide any evidence of an obligation that is due and owing. This "creditor," though purported to be owed $23,602.00 and having that obligation secured, has not filed a proof of claim in this case. Given that the case was filed on November 7, 2019, that is not too surprising. But in light of there being no evidence of any obligation being owed, it is suspicious.

The court could undertake to research to investigate what is a "California Livestock secured lien" under California law. But providing such legal assistance to Debtor is not only unfair, but highly improper.

The Motion is denied without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Value Collateral and Secured Claim filed by Mark Haynes ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is denied without prejudice.

12. 19-26072-E-13 EMM-1 | **EDGARDO/LETICIA PADAOAN** | **OBJECTION TO CONFIRMATION OF PLAN BY SPECIALIZED LOAN SERVICING LLC**
David Ritzinger | **11-11-19 [13]**

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 11, 2019. By the court's calculation, 29 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is xxxxxxxx.

Specialized Loan Servicing ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

A. Debtors failed to provide for Creditor's pre-petition arrearage.

Debtor's Response

On November 26, 2019, Debtors filed a Response to Creditor's Objection to Confirmation of Plan. Dckt. 13.

DISCUSSION

Creditor's objections are well-taken.

Failure to Cure Arrearage of Creditor

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts $43,259.48 in pre-petition arrearage. For the Class 1 Plan treatment, the Debtor lists the arrearage as $41,468.84, which is a monthly amortized payment of $691.15 to cure the arrearage.

As Creditor and Creditor's counsel are very experienced in this court and well know that the amount of a claim, and arrearage, are as set forth in the proof of claim unless another amount is ordered by the court pursuant to an objection to claim or other proper proceeding. Plan ¶ 3.02, ¶ 3.07.

Thus, Creditor clearly states its Objection as being that Debtor's plan is not adequately funded to provide for the required cure of the $43,359.48 (not merely allege that the arrearage is not provided for in the Plan). Creditor questions whether Debtor can adjust the budget to make the required additional $29.84 to fully pay the arrearage.

Creditor having clearly framed the Objection, Debtor has responded with a proposed amendment to increase the monthly plan arrearage payment from $691.15 to $720.99. Response, Dckt. 18. No declaration is provided as to how the Debtor will generate the additional amount to have the disposable income to fund the increased payment.

The Debtor has two failed and dismissed Chapter 13 cases since February 2018. This makes the ability to perform questionable. However, the proposed plan provides for a 15% dividend to creditors holding general unsecured claims, so there is some money in the plan would could be used. However, the court cannot ex parte reduce the stated dividend for the Class 7 unsecured claims.

The court also notes that the Plan provides for paying $103,709.48 in priority claims. Plan ¶ 3.12; Dckt. 2. However, the priority claims filed by the California Franchise Tax Board and Internal Revenue Service total "only" $82,898.53. Proofs of Claim No. 10 and 5, respectively. It appears that the $103,709.48 is for the priority and non-priority amounts of the two tax claims. This would create additional monies available to fund the additional cure amount, as well as add some cushion to the budget, assuming that the plan as proposed would fully fund payment of the higher stated priority claim amount.

At the hearing **xxxxxxxxxxxxxxxxxxxxxxxxxxxx**

~~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 Specialized Loan Servicing, LLC ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

FINAL RULINGS

13.	**17-28206-E-13 BLG-4**	**EDWARD/JANET CASARINO Chad Johnson**	**AMENDED MOTION TO EMPLOY CHRIS COCCHI AS REALTOR(S) 11-22-19 [94]**

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 November 7, 2019. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

The Motion to Employ 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 Employ is granted.

Edward C Casarino and Janet L. Casarino ("Debtor") seeks to employ Chris Cocchi ("Broker") pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Debtor seeks the employment of Realtor to assist Debtor in establishing the fair market value of the Property and to market and sell real property commonly knows as 2157 Clearview Circle, Benicia, California ("the Property").

Debtor argues that Broker's appointment and retention is necessary to assist Debtor in establishing the fair market value of the Property and to market and sell the Property for the benefit of the Debtor and all creditors in interest. The terms of the employment agreement include employment of Broker to perform the professional services of determining the fair market value, marketing and selling the property and a commission of 5.0% of the purchase price upon consummation of any sale.

Chris Cocchi, a Licensed Real Estate Agent of Chris Cocchi Real Estate, testifies that he has agreed to represent Debtors in negotiating a sale of the Property which will cover marketing and selling the

property for a commission of 5% of the purchase price. Chris Cocchi testifies he and the company do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

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

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

Taking into account all of the relevant factors in connection with the employment and compensation of Broker, considering the declaration demonstrating that Broker does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Chris Cocchi as Broker for the Chapter 13 Estate on the terms and conditions set forth in the Listing Agreement filed as Exhibit A, Dckt. 92. Approval of the commission is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Employ filed by Edward C Casarino and Janet L. Casarino ("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 Employ is granted, and Debtor is authorized to employ Chris Cocchi as Broker for Debtor on the terms and conditions as set forth in the Listing Agreement filed as Exhibit A, Dckt. 92.
>
> **IT IS FURTHER ORDERED** that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.
>
> **IT IS FURTHER ORDERED** that no hourly rate or other term referred to in the application papers is approved unless unambiguously so stated in this order or in a subsequent order of this court.

14. 19-24911-E-13 RDW-1 | **LAWRENCE MCNAMEE** **Joseph Canning** | **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY SOLANO FIRST FEDERAL CREDIT UNION** **9-26-19 [28]**

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

The Objection to Confirmation of Plan by Solano First Federal Credit Union is dismissed without prejudice.

Solano First Federal Credit Union ("Creditor") having filed a "Notice of Withdrawal of Objection Motion," which the court construes to be an Ex Parte Motion to Dismiss the pending Objection on December 4, 2019, Dckt. 42; no prejudice to the responding party appearing by the dismissal of the Objection; Creditor having the right to request dismissal of the objection pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Lawrence McNamee ("Debtor"); the Ex Parte Motion is granted, Creditor's Objection is dismissed without prejudice, and the court removes this Objection from the calendar.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection filed by Solano First Federal Credit Union ("Creditor") having been presented to the court, Creditor having requested that the Objection itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 42, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of Chapter 13 Plan is dismissed without prejudice.

15. 19-25922-E-13 DPC-1 | **ROSS SANCHEZ** **Muoi Chea** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK** **11-13-19 [16]**

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

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

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

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

16.	**18-26335-E-3** **MET-1**	**GUSTAV VIALE** **Mary Ellen Terranella**	**OBJECTION TO CLAIM OF CITIBANK, N.A., CLAIM NUMBER 11** **10-19-19 [19]**

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

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 19, 2019. By the court's calculation, 52 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 11 of Citibank N.A. is sustained, and the claim is disallowed in its entirety.

Gustav Henry Viale, Chapter 13 Debtor, ("Objector") requests that the court disallow the claim of Citibank N.A. ("Creditor"), Proof of Claim No. 11 ("Claim"), Official Registry of Claims in this case.

The Claim is asserted to be unsecured in the amount of $8391.40. Objector asserts that the Claim has not been timely filed. *See* FED. R. BANKR. P. 3002(c). The deadline for filing proofs of claim in this case is December 17, 2018. Notice of Bankruptcy Filing and Deadlines, Dckt. 9.

DISCUSSION

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

The deadline for filing a proof of claim in this matter was December 17, 2018. Creditor's Proof of Claim was filed on December 18, 2018. No order granting relief for an untimely-filed proof of claim for Creditor has been issued by the court.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Citibank N.A. ("Creditor") filed in this case by Gustav Henry Viale, Chapter 13 Debtor, ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Proof of Claim Number 11 of Citibank N.A. 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.

17.	**11-22038-E-13 EJV-1**	**FREDERICK/MILA HAYDEE LLAVE Eric Gravel**	**MOTION TO AVOID LIEN OF CITIBANK (SOUTH DAKOTA) N.A. 11-6-19 [151]**

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Citibank N.A. ("Creditor") against property of the debtor, Gustav Henry Viale ("Debtor") commonly known as 2954 Pebble Beach Circle, Fairfield, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $12,532.80. Exhibit B, Dckt. 154. An abstract of judgment was recorded with Solano County on January 13, 2010, that encumbers the Property. *Id.*

Pursuant to Debtor's Amended Schedule A, the subject real property has an approximate value of $574,500.00 as of the petition date. Dckt. 150. The unavoidable consensual liens that total $834,790.97as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure §703.140(b)(5) in the amount of $100.00 on Amended Schedule C. Dckt. 150.

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

ISSUANCE OF A COURT-DRAFTED ORDER

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Gustav Henry Viale ("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 Citibank N.A., California Superior Court for Solano County Case No. FCM107967, recorded on January 13, 2010, Document No. 201000003815, with the Solano County Recorder, against the real property commonly known as 2954 Pebble Beach Circle, Fairfield, 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.

18. 11-22038-E-13 EJV-2

FREDERICK/MILA HAYDEE LLAVE
Eric Gravel

MOTION TO AVOID LIEN OF AMERICAN EXPRESS CENTURION BANK
11-6-19 [156]

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of American Express Centurion Bank ("Creditor") against property of the debtor, Frederick Llave and Mila Haydee Llave ("Debtor") commonly known as 2954 Pebble Beach Circle, Fairfield, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $27,359.03. Exhibit B, Dckt. 159. An abstract of judgment was recorded with Solano County on October 27, 2010, that encumbers the Property. *Id.*

Pursuant to Debtor's Amended Schedule A, the subject real property has an approximate value of $574,500.00 as of the petition date. Dckt. 150. The unavoidable consensual liens that total $834,790.97as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure §703.140(b)(5) in the amount of $100.00 on Amended Schedule C. Dckt. 150.

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

ISSUANCE OF A COURT-DRAFTED ORDER

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Frederick Llave and Mila Haydee Llave ("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 American Express Centurion Bank, California Superior Court for Solano County Case No. FCM109866, recorded on October 27, 2010, Document No. 201000099922, with the Solano County Recorder, against the real property commonly known as 2954 Pebble Beach Circle, Fairfield, 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.

19. 19-25742-E-13 DPC-2 | **ORLANDO CISNEROS** **Richard Jare** | **OBJECTION TO DISCHARGE BY DAVID P. CUSICK** **10-30-19 [43]**

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 October 30, 2019. By the court's calculation, 41 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.

David P. Cusick, the Chapter 13 Trustee ("Objector") objects to Orlando Cisneros'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 25, 2018. Case No. 18-22528. Debtor received a discharge on January 9, 2019. Case No. 18-22528, Dckt. 99.

The instant case was filed under Chapter 13 on September 11, 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 April 25, 2018. , which is less than four years preceding the date of the filing of the instant case. Case No. 18-22528, Dckt. 99. Therefore, pursuant to 11 U.S.C. § 1328(f)(1), Debtor is not eligible for a discharge in the instant case.

Therefore, the Objection is sustained. Upon successful completion of the instant case (Case No. 19-25742), the case shall be closed without the entry of a discharge, and Debtor shall receive no discharge in the instant case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Discharge filed by David P. Cusick, the Chapter 13 Trustee, ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to Discharge is sustained, and upon successful completion of the instant case, Case No. 19-25742, the case shall be closed without the entry of a discharge.

20. 19-25942-E-13 DPC-1

MICHAEL DUNCAN AND CYANNA ISTED
Stephen Reynolds

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK
11-13-19 [14]

WITHDRAWN BY M.P.

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

David P. Cusick ("the Chapter 13 Trustee") having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Objection to Confirmation of Plan was dismissed without prejudice, and the matter is removed from the calendar.**

21. 19-25843-E-13 PGM-2 | **JERLINE WALLACE** Peter Macaluso | **MOTION TO VALUE COLLATERAL OF WELLS FARGO BANK, N.A. 11-7-19 [32]**

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, Chapter 13 Trustee, Creditor, parties requesting special notice, 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 Wells Fargo Bank, N.A. ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $4,000.00.

The Motion filed by Jerline Linda Wallace ("Debtor") to value the secured claim of Wells Fargo Bank, N.A. ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 34. Debtor is the owner of a 2013 Ford Fusion ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $4,000.00 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

The lien on the Vehicle's title secures a purchase-money loan incurred in December 2013, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $6,630.26. Proof of Claim, No. 10. 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 $4,000.00, 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 Jerline Linda Wallace ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Wells Fargo Bank, N.A. ("Creditor") secured by an asset described as 2013 Ford Fusion ("Vehicle") is determined to be a secured claim in the amount of $4,000.00, 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 $4,000.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

22. 19-25256-E-13 RJM-1 | **RONALD/MICHELE HASSETT** **Rick Morin** | **OBJECTION TO CLAIM OF AMERICAN EXPRESS NATIONAL BANK, CLAIM NUMBER 17** **10-23-19 [17]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Debtor, and Office of the United States Trustee on October 22, 2019. By the court's calculation, 49 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 17 of American Express National Bank is sustained, and the claim is disallowed in its entirety.

Ronald Hassett and Michele Catherine Hassett, Chapter 13 Debtor, ("Objector") requests that the court disallow the claim of American Express National Bank ("Creditor"), Proof of Claim No. 17 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $7,608.39. 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. Objector states that according to the Proof of Claim, the last transaction date and charge off date was July 2008. The date of last payment on the Statement of Account Information attached to the Proof of Claim states November 2007.

DISCUSSION

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

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

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. 17 lists the charge off date as July 2008. The court takes judicial notice that a creditor does not "charge off" an account if payments are being made or further credit is being extended. (This basic fundamental point of credit transactions is commonly known by both creditors and consumers alike.)

No payment or other transaction occurred after November 2007. Thus, the four-year statute of limitations expired on November 2011.

This bankruptcy case was filed on August 22, 2019—2,851 days after the statute of limitations expired. There was no period of time for 11 U.S.C. § 108 to preserve and extend for Creditor.

Based on the evidence before the court, the creditor's claim is disallowed in its entirety due to the statute of limitations expiring prior to the filing of the case. The Objection to the Proof of Claim is sustained.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of American Express National Bank ("Creditor") filed in this case by Ronald Hassett and Michele Catherine Hassett, Chapter 13 Debtor, ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Proof of Claim Number 17 of American Express National Bank 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.

23. 19-26957-E-13 MS-1 | **MARK HAYNES** **Mark Shmorgon** | **MOTION TO VALUE COLLATERAL OF INTERNAL REVENUE SERVICE 11-7-19 [8]**

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, 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 the Internal Revenue Service is granted, and Creditor's secured claim is determined to have a value of $30,796.83.

The Motion filed by Mark Haynes ("Debtor") to value the secured claim of the Internal Revenue Service ("IRS" or "Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 10. Debtor is the owner of real property commonly known as 6931 Lincoln Avenue, California, 2015 Honda Sport Utility, two bank accounts, household goods, electronics, and horses ("Property"). Debtor seeks to value the Property at a replacement value of $30,796.83 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Creditor filed Proof of Claim No. 4 o n November 21, 2019. The Proof of Claim asserts that $30,796.83 is secured by the Property, that $17,409.50 is a priority unsecured claim, and that $47,869.02 is a general unsecured claim.

As has been disclosed, in filing proofs of claim, the IRS makes its own calculation for purposes of 11 U.S.C. § 506(a) based upon Debtor's assets and then bifurcates the secured and unsecured portions of its claim. The IRS appears to have followed that procedure here.

Upon review of the evidence and the statement of the secured claim for the IRS in Proof of Claim No. 4, the court determines the value of the secured claim to be $30,796.83, with the balance to be treated as unsecured claims (whether priority or general unsecured claims).

The Motion 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 Mark Haynes ("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 the Internal Revenue Service ("IRS" or "Creditor") secured by an asset described as real property commonly known as 6931 Lincoln Avenue, California, 2015 Honda Sport Utility, two bank accounts, household goods, electronics, and horses ("Property") is determined to be a secured claim in the amount of $30,796.83, and the balance of the claim is an unsecured claim (whether priority or general unsecured claim) to be paid through the confirmed bankruptcy plan.

24. 19-26158-E-13 DPC-1 | **NAOMI DAVIS** **Michael Benavides** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK** **11-13-19 [22]**

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

David P. Cusick ("the Chapter 13 Trustee") having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Objection to Confirmation of Plan was dismissed without prejudice, and the matter is removed from the calendar.**

25. 19-25174-E-13 DPC-1

CHRISTOPHER/NIKESHIA KIESSLING
Chad Johnson

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK
10-7-19 [17]

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtors and Debtor's Attorney on October 7, 2019. By the court's calculation, 29 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is overruled.

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

A. Debtor's proposed plan relies on a motion to value not yet filed.

DEBTORS'S OCTOBER 30 RESPONSE AND AMENDED RESPONSE

On October 30, 2019 Debtors filed a Response asserting that a Motion to Value Secured Claim was set to be filed the next day, October 31, 2019 and set to be heard on December 10, 2019. Further, Debtors assert that they are current on the plan payments with a last payment of $600.00 received on October 28, 2019. Response, Dckt. 20. Further, Debtors request that the present Objection be continued to December 10, 2019, the same day as the hearing date set for the Motion to Value the Secured Claim. *Id.*

On the same day, Debtors filed an Amended Response. Dckt. 23. The Amended Response corrected the name of Co-Debtor, Nikeshia Marie Kiessling.

DISCUSSION

The Debtors filed Motion to Value the Secured Claim on October 30. Dckt. 34. The court shall continue the hearing on this Motion to December 10, 2019, to be heard alongside the Debtor's Motion to Value.

The court granted the Motion to Value. This resolved the Trustee's objection.

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 to Confirmation is overruled. Counsel for the 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.

26. 19-25174-E-13 BLG-1 | **CHRISTOPHER/NIKESHIA KIESSLING** | **MOTION TO VALUE COLLATERAL OF TRAVIS CREDIT UNION**
Chad Johnson | **10-31-19 [24]**

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, parties requesting special notice, and Office of the United States Trustee on October 31, 2019. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of Travis Credit Union ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $14,500.00.

The Motion filed by Christopher Jerome Kiessling and Nikeshia Marie Kiessling ("Debtor") to value the secured claim of Travis Credit Union ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 26. Debtor is the owner of a 2013 Ford Flex ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $14,500.00 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).

On November 21, 2019, Trustee filed a Non-Opposition to the Motion to Value. Dckt. 30. Trustee does not oppose the Motion because Debtor provides for Creditor on Schedule D and in Class 2B of the proposed Plan.

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on January, 18, 2017, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $21,969.40. Proof of Claim, No. 2. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of $14,500.00, 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 Christopher Jerome Kiessling and Nikeshia Marie Kiessling ("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 Travis Credit Union ("Creditor") secured by an asset described as 2013 Ford Flex ("Vehicle") is determined to be a secured claim in the amount of $14,500.00, 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 $14,500.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.