

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

Honorable Christopher D. Jaime  
Robert T. Matsui U.S. Courthouse  
501 I Street, Sixth Floor  
Sacramento, California

**PRE-HEARING DISPOSITIONS COVER SHEET**

**DAY: TUESDAY**

**DATE: January 14, 2020**

**CALENDAR: 1:00 P.M. CHAPTER 13**

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

**No Ruling:** All parties will need to appear at the hearing unless otherwise ordered.

**Tentative Ruling:** If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule, or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

**Final Ruling:** Unless otherwise ordered, there will be no hearing on these matters and no appearance is necessary. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

**Orders:** Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within seven (7) days of the final hearing on the matter.

## Eastern District of California

Honorable Christopher D. Jaime  
Bankruptcy Judge  
Sacramento, California

**January 14, 2020 at 1:00 p.m.**

1. [19-26701](#)-B-13 MICHAEL/TRACY GRAHAM OBJECTION TO CONFIRMATION OF  
[DPC](#)-1 Bruce Charles Dwiggins PLAN BY DAVID P. CUSICK  
12-18-19 [[21](#)]

CONTINUED TO 2/18/2020 AT 1:00 P.M. TO BE HEARD AFTER CONTINUED MEETING OF CREDITORS SET FOR 2/13/2020.

## Final Ruling

No appearance at the January 14, 2020, hearing is required. The court will enter a minute order.

2.     [19-26402](#)-B-13     JORGE VASQUEZ                     CONTINUED OBJECTION TO  
          [DPC](#)-1             Thomas A. Moore                 CONFIRMATION OF PLAN BY DAVID P  
  CUSICK  
  11-25-19   [\[15\]](#)

CONTINUED TO 2/11/2020 AT 1:00 P.M. TO BE HEARD AFTER CONTINUED MEETING OF  
CREDITORS SET FOR 2/06/2020.

**Final Ruling**

No appearance at the January 14, 2020, hearing is required. The court will enter a  
minute order.

3. [19-27010](#)-B-13 MARY CARTER  
[DPC](#)-1 Yasha Rahimzadeh

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P. CUSICK  
12-18-19 [[16](#)]

### **Tentative Ruling**

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C).

The court's decision is to overrule the objection as moot.

Subsequent to the filing of the Trustee's objection, the Debtor filed an amended plan on January 1, 2020. The confirmation hearing for the amended plan has not been set however. Nonetheless, the earlier plan filed November 11, 2019, is not confirmed.

The objection is ORDERED OVERRULED AS MOOT for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

4. [19-26311](#)-B-13 NOEMY RIVAS CONTINUED OBJECTION TO  
[DPC](#)-1 Mark A. Wolff CONFIRMATION OF PLAN BY DAVID P  
CUSICK  
11-25-19 [[20](#)]

**No Ruling**

5. [19-26918](#)-B-13 FEIPE OROPEZA  
[DPC](#)-1 Matthew J. Gilbert

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P. CUSICK  
12-18-19 [[15](#)]

DEBTOR DISMISSED: 12/18/2019

**Final Ruling**

The case having been dismissed on December 18, 2019, the objection to confirmation is overruled as moot.

The objection is ORDERED OVERRULED AS MOOT for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

6. [19-24625](#)-B-13 CASEY WOODBURY  
[AP-1](#) Pro Se

MOTION TO RECONSIDER  
12-12-19 [[63](#)]

**Final** Ruling

No appearance at the January 14, 2019, hearing is necessary. The motion is denied as moot in light of the court's order granting the motion to dismiss under § 109(g)(2).

The motion is ORDERED DENIED AS MOOT for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

7. [19-26925](#)-B-13 DELILIA KIRTH  
Matthew J. Gilbert

OBJECTION TO CONFIRMATION OF  
PLAN BY THE BANK OF NEW YORK  
MELLON  
12-18-19 [[16](#)]

**No Ruling**



8. [15-28133](#)-B-13 PETER LADD  
WW-[1](#) Mark A. Wolff

MOTION TO MODIFY PLAN  
12-3-19 [[59](#)]

**No Ruling**

9.     [19-26941](#)-B-13   MICHAEL WYCLIFFE AND                   OBJECTION TO CONFIRMATION OF  
          [DPC](#)-1            REBECCA WEAVER                   PLAN BY DAVID P. CUSICK  
                      Pro Se                   12-17-19   [\[17\]](#)

CONTINUED TO 1/21/2020 AT 1:00 P.M. TO BE HEARD AFTER CONTINUED MEETING OF  
CREDITORS SET FOR 1/16/2020.

**Final Ruling**

No appearance at the January 14, 2020, hearing is required. The court will enter a  
minute order.

10. [17-26052](#)-B-13 TANISHA MAVY  
[TM](#)-20 Pro Se  
**Thru #11**

MOTION TO MODIFY PLAN  
12-2-19 [[150](#)]

**No Ruling**

11. [17-26052](#)-B-13 TANISHA MAVY  
[TM](#)-21 Pro Se

MOTION TO AVOID LIEN OF  
UNIVERSAL ACCEPTANCE  
CORPORATION  
12-2-19 [[146](#)]

**Final Ruling**

The motion has been set for hearing on the 28-days 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)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 matter will be resolved without oral argument.

The court's decision is to deny without prejudice the motion to avoid lien.

Debtor Tanisha Mavy ("Debtor") requests to avoid the lien of Universal Acceptance Corporation ("Creditor") on a 2005 Chrysler Pacifica ("Vehicle"). Debtor properly served creditor at the address listed on Claim No. 2-1 filed by Creditor. Creditor did not file a response.

The Debtor's motion to value Creditor's collateral, *i.e.*, the Vehicle, at \$745.90 was granted on December 18, 2017. Dkts. 66, 79. Debtor states that the Chapter 13 Trustee has paid the secured claim in full and an unsecured amount of \$108.09.

When the court granted Debtor's motion to value the Vehicle it did not determine the validity of Creditor's lien, which means Creditor's lien remains of record until the plan is completed. This is required by 11 U.S.C. § 1325(a)(5)(B)(I). The court's ruling on the Debtor's motion to value also so states: "When the respondent is paid \$745.90 and subject to the completion of the plan, its secured claim shall be satisfied in full and the collateral free of [Creditor's] lien." Dkt. 66 at 1-2. Once the plan is completed and if the Creditor will not release its lien, the court will entertain an adversary proceeding. *See also* 11 U.S.C. § 1325(a)(5)(B)(I).

Because the Debtor has not yet completed her plan, Debtor's motion to avoid Creditor's lien on the Vehicle is denied without prejudice to the filing of any necessary adversary proceeding once the plan is complete.

The motion is ORDERED DENIED WITHOUT PREJUDICE for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

12. [19-26654](#)-B-13 THERESA WALKER  
[DPC](#)-2 Colby D. LaVelle

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P CUSICK  
12-10-19 [[20](#)]

### **Tentative Ruling**

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

The court's decision is to sustain the objection and deny confirmation of the plan.

First, the Debtor is delinquent to the Chapter 13 Trustee in the amount of \$500.00.. An additional payment of \$976.36 was due December 25, 2019. The Debtor does not appear to be able to make plan payments proposed and has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, the Debtor cannot make plan payments required under 11 U.S.C. § 1325(a)(6). The plan payment required is \$976.36 per month but Schedule J indicates a monthly net income of \$676.63.

The plan filed October 25, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The objection is ORDERED SUSTAINED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

13. [19-26955](#)-B-13 WARREN CARLSON  
[DPC](#)-1 Bonnie Baker

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P. CUSICK  
12-17-19 [[30](#)]

CONTINUED TO 2/11/2020 AT 1:00 P.M. TO BE HEARD IN CONJUNCTION WITH DEBTOR'S  
MOTION TO VALUE COLLATERAL OF WELLS FARGO BANK.

**Final Ruling**

No appearance at the January 14, 2020, hearing is required. The court will enter a  
minute order.

14. [19-27061](#)-B-13 STEVEN/JENNIFER SOLORIO OBJECTION TO CONFIRMATION OF  
[DPC](#)-1 Jeffrey S. Ogilvie PLAN BY DAVID P. CUSICK  
12-17-19 [[13](#)]

CONVERTED: 1/08/2020

**Final Ruling**

The case having been converted on January 8, 2020, the objection to confirmation is overruled as moot.

The objection is ORDERED OVERRULED AS MOOT for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

### **Tentative Ruling**

Because less than 28 days' notice of the hearing was given, the motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, parties in interest were not required to file a written response or opposition. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

The court's decision is to deny the motion without prejudice.

Debtor's motion to value the secured claim of Capital One Auto Finance ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2015 Nissan Pathfinder 2 Wheel Drive ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$15,720.00 as of the petition filing date.

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 2-1 filed by Capital One Auto Finance is the claim which may be the subject of the present motion.

No objection has been filed to the Debtor's motion to value collateral.

### **Discussion**

A debtor's ability to value collateral consisting of a motor vehicle is limited by the terms of the hanging paragraph of § 1325(a). See 11 U.S.C. § 1325(a) (hanging paragraph). Under this statute, a lien secured by a motor vehicle cannot be stripped down to the collateral's value if: (i) the lien securing the claim is a purchase money security interest, (ii) the debt was incurred within the 910-day period preceding the date of the petition, and (iii) the motor vehicle was acquired for the debtor's personal use. 11 U.S.C. § 1325(a) (hanging paragraph).

Here, the Debtor does not argue that the Vehicle is collateral outside the scope of the hanging paragraph. Instead, the Debtor argues that only a portion of the creditor's claim, secured by the subject collateral described as 2015 Nissan Pathfinder 2 Wheel Drive, is unprotected by the hanging paragraph because it resulted from financing for the negative-equity portion of the vehicle traded-in at the time of the Debtor's purchase of the present collateral.

The Ninth Circuit has held "that a creditor does not have a purchase money security interest in the 'negative equity' of a vehicle traded in during a new vehicle purchase." *In re Penrod*, 611 F.3d 1158, 1164 (9th Cir. 2010). Because of this, the portion of an automobile lender's claim attributable to negative-equity financing is not secured by a purchase money security interest (PMSI). Thus, negative equity debt is not protected by the hanging paragraph.

The court adopts the pro-rata approach supported by the cases under which the percentage of the total amount originally financed that was secured by a PMSI is multiplied by the present balance of the debt owed to creditor on its claim. The product is the amount of the present claim that is secured by a PMSI and protected by the hanging paragraph of § 1325(a). The non-PMSI portion of the claim may be treated as unsecured so long as the value of the collateral does not support it.

Here, the total amount of the original financing for the subject collateral was \$28,608.28. Although the Debtor traded in a 2008 Saturn Outlook, which provided a down payment of \$3,000.00 (Claim No. 2-1, Attachment 1), the net value of the trade-in was -\$8,660.34 because Debtor had a prior credit balance of \$11,660.34. Thus, the portion of the amount originally financed secured by a PMSI was \$28,608.28. This is 100% of

the total amount financed. It follows that 0% is the non-PMSI amount that financed negative equity on the trade-in vehicle.

Multiplying 100% by the present claim amount of \$23,887.43 equals \$23,887.43, which is the PMSI portion of the present claim held by creditor. Any negative equity portion of the present claim is not protected by the hanging paragraph and, as a result, may be treated as an unsecured claim if it is uncollateralized. Since there is no negative equity in Debtor's situation, \$0 may be treated as an unsecured claim.

Oddly, the Debtor reaches a valuation for the Vehicle at \$15,720.00 by calculating what "a buyer without a trade in would presently owe . . . ." Dkt. 28, p. 2, para. 5. Why the Debtor provides a speculative scenario is beyond the court since the Debtor did have a trade-in vehicle when she purchased the 2015 Nissan Pathfinder 2 Wheel Drive on March 16, 2018. The court, therefore, rejects Debtor's valuation of \$15,700.00. The Debtor has not carried her burden as to value.

The motion is ORDERED DENIED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.



16. [19-26466](#)-B-13 JOANNE BRONSON  
[DPC](#)-1 Matthew J. DeCaminada

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P CUSICK  
12-10-19 [[14](#)]

### **Tentative Ruling**

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C).

The court's decision is to overrule the objection as moot.

Subsequent to the filing of the Trustee's objection, the Debtors filed an amended plan on December 17, 2019. The confirmation hearing for the amended plan is scheduled for January 21, 2020. The earlier plan filed October 17, 2019, is not confirmed.

The objection is ORDERED OVERRULED AS MOOT for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

17. [19-26567](#)-B-13 WALTER FLETSCHER  
[APN](#)-1 Douglas B. Jacobs  
**Thru #18**

OBJECTION TO CONFIRMATION OF  
PLAN BY VW CREDIT, INC.  
12-18-19 [[21](#)]

**Tentative Ruling**

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C).

The court's decision is to overrule the objection. The plan is nonetheless not confirmable.

Subsequent to the filing of the objections to confirmation filed by VW Credit, Inc. and Chapter 13 Trustee David P. Cusick, the Debtor filed a response stating that the plan filed October 22, 2019, is not confirmable. Dkt. 25. The Debtor states that he will file an amended plan.

The objection is ORDERED OVERRULED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

18. [19-26567](#)-B-13 WALTER FLETSCHER  
[DPC](#)-1 Douglas B. Jacobs

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P. CUSICK  
12-16-19 [[15](#)]

**Tentative Ruling**

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C).

The court's decision is to overrule the objection. The plan is nonetheless not confirmable.

Subsequent to the filing of the objections to confirmation filed by VW Credit, Inc. and Chapter 13 Trustee David P. Cusick, the Debtor filed a response stating that the plan filed October 22, 2019, is not confirmable. Dkt. 25. The Debtor states that he will file an amended plan.

The objection is ORDERED OVERRULED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

### **Tentative Ruling**

Because less than 28 days' notice of the hearing was given, the motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, parties in interest were not required to file a written response or opposition. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

The court's decision is to grant the motion and authorize the Debtor to incur post-petition debt.

This is the Debtor's third motion seeking permission to purchase a vehicle, specifically a used 2012 Kia Sportage ("Vehicle"), the total purchase price of which is \$11,643.79, with monthly payments of \$281.54 and an interest rate of 15.45%.

The Debtor's first motion to incur debt sought permission to purchase a new 2020 Toyota Corolla LE at \$18,547.48 with monthly payments of \$408.92; this was denied by the court. See *dk*. 62. The Debtor's second motion to incur debt sought permission to purchase a used 2012 Kia Sportage, the same Vehicle identified in the present motion, at \$11,643.79 with monthly payments of \$281.54. This was denied by the court because the proposed interest rate was high at 15.45% and the court suggested that the dealership may be inclined to offer a reduced interest rate if shown the court's ruling. The Debtor presented the dealership with the court's ruling but was unsuccessful with lowering the interest rate. Additionally, Debtor was unsuccessful in finding a lower interest rate at two other car dealerships, both of which provided interests rates of over 20%.

The Debtor's expenses are detailed on Schedule J. *Dkt.* 82. The Declaration of Paulette Perfumo is provided to support Debtor's ability to make car payments and need to purchase a replacement vehicle.

### **Discussion**

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

The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. There being no opposition from any party in interest and the terms being reasonable, the motion is granted.

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

**Final Ruling**

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). 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)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument.

The court's decision is to permit the requested modification and confirm the modified plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtor has filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes. 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.

The court will enter a minute order.

21. [19-26879](#)-B-13 GHASSAN KAMAL  
[AP-1](#) Peter G. Macaluso  
**Thru #22** OBJECTION TO CONFIRMATION OF  
PLAN BY THE BANK OF NEW YORK  
MELLON  
12-19-19 [[39](#)]

**No Ruling**

22. [19-26879](#)-B-13 GHASSAN KAMAL  
[DPC-1](#) Peter G. Macaluso  
OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P. CUSICK  
12-17-19 [[31](#)]

**No Ruling**

23. [19-26492](#)-B-13 SATURNINO PIZARRO  
[DPC](#)-2 Peter G. Macaluso

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P CUSICK  
12-9-19 [[32](#)]

### **Tentative Ruling**

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

The court's decision is to sustain the objection and deny confirmation of the plan.

First, the Debtor is delinquent to the Chapter 13 Trustee in the amount of \$4,000.00, . An additional payment of \$4,000.00 was due December 25, 2019. The Debtor does not appear to be able to make plan payments proposed and has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, the terms for payment of the Debtor's attorney's fees are unclear. The plan does not specify as to whether counsel shall seek approval of fees by either complying with Local Bankr. R. 2016-1(c) or by filing and serving a motion in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017.

The Debtor filed a spousal waiver of right to claim exemptions on December 16, 2019. The Debtor has complied with California Code of Civil Procedure § 703.140(a) and this issue raised by the Trustee is resolved.

Nonetheless, the plan filed November 1, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The objection is ORDERED SUSTAINED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

### **Tentative Ruling**

The motion has been set for hearing on an order shortening time by Local Bankruptcy Rule 9014-1(f)(3). Since the time for service is shortened to fewer than 14 days, no written opposition is required. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues that are necessary and appropriate to the court's resolution of the matter.

The court's decision is to grant the motion to impose automatic stay.

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c)(4)(B) imposed in this case. This is the Debtor's third bankruptcy petition pending in the past 12 months. The Debtor's first bankruptcy case, a chapter 7, was dismissed on November 15, 2019, after Debtor failed to timely file required documents (case no. 19-26682, dkt. 16). The Debtor's second bankruptcy case, a chapter 13, was dismissed on August 2, 2019, after Debtor failed to make plan payments (case no. 19-20292, dkt. 41).

### **Discussion**

Section 362(c)(4)(A) provides that if a case is filed by an individual debtor, and if two or more cases of the debtor were pending within the previous year but were dismissed, other than a case refiled after dismissal of a case under § 707(b), the automatic stay does not go into effect upon the filing of the new case. However, § 362(c)(4)(B) provides that on request made within 30 days after the filing of the new case, the court may order the stay to take effect if the moving party demonstrates that the filing of the new case is in good faith as to the creditors to be stayed.

The subsequently filed case is presumed to be filed in bad faith if: (I) 2 or more previous bankruptcy cases were pending within the 1-year period; (II) a previous case was dismissed after the debtor failed to file or amend the petition or other documents as required without substantial excuse, failed to provide adequate protection as ordered by the court, or failed to perform the terms of a plan confirmed by the court; or (III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next previous case. *Id.* at § 362(c)(4)(D). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.*

The Debtor states that she is filing the present bankruptcy in order to save her home. According to the Declaration of Kim Walker, the chapter 7 bankruptcy failed because Debtor was advised by a company helping her try to save her home to file pro se. Debtor did not know how to file the required documents and the case was dismissed. Thereafter, Debtor filed a chapter 13 bankruptcy and initially had enough income to afford plan payments but an unexpected car repair and her husband's loss in income resulted in delinquency in plan payments. Debtor states that her circumstances have changed because her husband is now working a permanent position and Debtor's expenses have stabilized.

The Debtor has offered sufficient explanation from which the court can conclude that her financial or personal circumstances have substantially changed, and that the present case will be concluded with a confirmed plan that will be fully performed. The Debtor has shown by clear and convincing evidence that this case has been filed in good faith within the meaning of § 362(c)(4)(D).

The motion is granted and the automatic stay is imposed for all purposes and parties.

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.