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

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

**January 28, 2020 at 3:00 p.m.**

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| **1.** | **19-27786-E-13**<br>**MRL-1** | **LAURIE YODER**<br>**Mikalah Liviaks** | **MOTION FOR COMPENSATION FOR MIKALAH LIVIAKIS, DEBTORS ATTORNEY(S)**<br>**1-1-20 [15]** |

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 2, 2020. By the court's calculation, 26 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00).

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

**The Motion for Allowance of Professional Fees is denied.**

Mikalah R. Liviakis, the Attorney ("Applicant") for Laurie Lee Yoder, Chapter 13 Debtor

("Client"), requests Allowance of Fees under a Flat Fee Agreement for $5,500.00 in this case.

Pre-petition, Debtor made a $4,000.00 deposit for attorney fees and $400.00 for costs of filing including the court filing fee. Debtor proposes to pay $1,500.00 through the Chapter 13 Plan.

Fees are requested for the services to be provided through the end of the bankruptcy case, with the exception of: (1) defending Debtor against any complaint filed by the trustee or any other party in interest to deny Debtor's discharge; (2) defending Debtor against any complaint filed by any creditor to except its debt from discharge; (3) defending Debtor against any complaint filed by the trustee to avoid or to recover any transfer of property which Debtor made before the filing of Debtor's bankruptcy petition; (4) prosecuting any complaint which Debtor is obligated to file for a determination that any indebtedness is dischargeable; (5) appealing any order of judgment which is entered against Debtor; (6) any legal work necessary after Debtor's chapter 13 case is closed, converted, dismissed.

**TRUSTEE'S RESPONSE**

Trustee filed a Response on January 14, 2020. Dckt. 19. Trustee agrees that the court may approve a flat free arrangement. Further, while Federal Rule of Bankruptcy Procedure 2016(a) requires an application for compensation or reimbursement to include time expended, if the court approves the agreement for the flat fee no additional motion would be needed. However, Trustee then proceeds to list his concerns related to the present flat free agreement for $5,500.00.

Trustee asserts that where Debtor is the Movant on the proposed flat fee, reasonableness is the standard. Trustee contends that Debtor's Counsel seems to argue that because the normal flat fee is $4,000.00 and his normal hourly fee is $385.00, a flat fee is reasonable. Trustee then lists the cases in 2018 where the court approved fees at $375.00 per hour for Debtor's Counsel in other Chapter 13 cases. Furthermore, Trustee points out that Debtor's Counsel failed to establish the average hourly fee and points the court to the Court Clerk's report on professional fees and provides an example where a Chapter 13 attorney was awarded fees of $300.00 per hour in 2018. Trustee argues that if $300.00 per hour is the average fee and $385.00 per hour is allowed, that is a 28.3% increase - increasing a flat $4,000.00 fee by 28.3% would yield $5,132.00, less than the flat fees requested.

Trustee also directs this court to the rules and guideline of other districts in California may be of interest to the court to decide the issue. There are five sets of rules and guidelines and according to Trustee's calculations these produce five different results:

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| Southern | - $3,900.00 |
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Trustee argues that the flat fee requested is below only the highest "no look" fee, but where most of the "no look" fees includes additional charges for additional motions, Counsel's flat fee requested in this case doers not allow additional charges and is probably near the middle range of "no look" fees once these additional fees are taken into account.

Though Counsel does not quantify his success rate, Trustee agrees that a high success rate

may justify a higher fee. A quick review of Trustee's records show that Debtor's Counsel appears to have a high success rate: approximately 128 chapter 13 cases filed in 2019, with 10 already closed, a success rate of 78.125%; and 67 chapter 13 cases filed in 2018 with 17 already closed, a success rate of 74.6%.

Trustee suggest that the court may want to consider adjusting the "no look" fee for inflation. Stating that the last adjustment to the "no look" fee was made seven years ago (May 1, 2012) from $3,500.00 to $4,000.00 for an individual and $5,000.00 to $6,000.00 for a business case.

Trustee asserts that Debtor's Counsel failed to list the specific tasks that he would be doing for Debtor that would not be normally required under the regular "no look" agreement. Noting that if Debtor's Counsel proposes to file a response to each motion and appear in court if a motion is opposed, absent a final ruling, Debtor's Counsel should clarify that.

Trustee asserts that Debtor's Counsel has not clarified what happens if a case is dismissed prior to confirmation if his alternate flat fee is approved, or if the case is dismissed after confirmation but before the fee is paid in full. Trustee turns to California law RPC §1.15(a) normally requires advances for fees, costs, and expenses to be deposited in "Trust Account," absent written disclosure to the client and, RPC §1.15(b), the client is entitled to a refund on any fee not earned in the event the representation is terminated or the services for which the fee has been paid are not completed.

Finally, Trustee is not certain what the original Attorney-Client agreement provides. A signed "Rights and Responsibilities" has been filed, but no hourly rate is reflected. Trustee states that Debtor Counsel's Declaration does not state that Debtor agreed to a $385.00 hourly rate. Trustee has not been provided with the agreement and it has not yet been filed.

**APPLICABLE LAW**

**Reasonable Fees**

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

A. Were the services authorized?

B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?

C. Are the services documented adequately?

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

E. Did the attorney exercise reasonable billing judgment?

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

**Lodestar Analysis**

For bankruptcy cases in the Ninth Circuit, "the primary method" to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves "multiplying the number of hours reasonably expended by a reasonable hourly rate." *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis cab be appropriate, however. *See id.* (citing *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

**Reasonable Billing Judgment**

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

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

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

**FEES AND COSTS & EXPENSES REQUESTED**

**Fees**

Applicant anticipates working approximately 15 hours in post-petition services. The proposed chapter 13 plan is for five (5) years and includes a mortgage payment through class one of the plan. The post-petition services are described in the following main categories:

Core Services: Applicant anticipates preparing for and attending Meeting of Creditors, Post-341 Order Confirming, Additional Info, Amendments, Maintain contact with debtor regarding changes in her financial situation during the Chapter 13 case,

Respond to continuing creditor inquiries, Represent the debtor in motions to dismiss or convert, Notice of Filed Claims, Finishing Case: 2nd credit counseling, 1328 certificate, Review Impact of Discharge with Debtor.

Law and Motion Services: Applicant will provide services related to Objection to Confirmation of current and future Chapter 13 Plans (trustee & creditors), Motion to Confirm, Motion to Modify, Objection to improper or invalid claims; represent the debtor in motions for relief from stay; and monitor debtor's submission of annual tax returns to Chapter 13 Trustee when the Trustee requests them.

Mortgage/Real Estate Services: Applicant anticipates reviewing property valuation with Trustee; and reviewing liquidation analysis, notice of mortgage payment changes, mortgage company correspondence missing statements, erroneous information in statements, wrongful threats of foreclosure, continuous sale dates, mortgage modifications, and sale of property.

Services required by Rights and Responsibilities: Applicant anticipates receiving and reviewing with Debtor– Debtor's documents, debts, assets, liabilities, income, and expenses, counsel Debtor regarding the advisability of filing either a Chapter 7 or Chapter 13 case. Explain what payments will be made directly by Debtor and what payments will be made through Debtor's Chapter 13 plan, with particular attention to mortgage and vehicle loan payments, as well as any other claims which accrue interest. Explain to Debtor how, when, and where to make the Chapter 13 plan payments. Explain to Debtor how the attorney's fees and Trustee's fees are paid and provide Debtor an executed copy of this Document. Explain to Debtor that the plan payment must be made to the Trustee on the twenty-fifth day of each month beginning the month after the petition is filed, advise Debtor of the requirement to attend the 341 Meeting of the Creditors, and the date, time and place of the meeting. Advise Debtor of the necessity of maintaining liability, collision and comprehensive insurance on vehicles securing loans or leases. Timely prepare Debtor's petition, plan, motions to value collateral, motions to avoid liens, statements, and schedules. Timely serve Debtor's petition, plan, statements, and schedules on the chapter 13 trustee. Timely serve Debtor's plan and motions to value collateral and motions to avoid liens together with the notice of hearing required by paragraph 3(b) of General Order 05-03. Appear at the 341 Meeting of Creditors with Debtor. Respond to objections to plan confirmation, and where necessary, prepare an amended plan. Prepare, file, and serve necessary modifications to the plan which may include suspending, lowering, or increasing plan payments. Prepare, file and serve necessary amended statements and schedules, according to information provided by Debtor. Prepare, file, and serve necessary motions to buy, sell, or refinance property when appropriate. Object to improper or invalid claims, if necessary, based upon documentation provided by Debtor. Represent Debtor in motions for relief from stay if necessary. Where appropriate, prepare, file, and serve necessary motions to avoid liens on real or personal property and to value the collateral of secured creditors. Provide such other legal services as are necessary for the administration of the present case before the Bankruptcy Court.

Counsel argues that compensation is reasonable based on the customary compensation: The Pre-Approved Flat Fee in the Eastern District of CA according to the Rights and Responsibilities and Local Rules is $4,000 for all case work, plus additional fees for significant and unanticipated work. In contrast, in the present case Attorney seeks approval of a $5,500 flat fee, for pre and post-petition work

as reasonable compensation in light of three factors:

(1) The flat fee in this case precludes additional compensation with the exception of the litigation items listed above;

(2) Attorney has considerable bankruptcy experience and charges $385 for hourly billings;

(3) This case includes mortgage debt (which often requires significant work in terms of modified mortgage payments, loan modifications, sale of property, proof of claim objections).

This case was filed on December 17, 2019. This motion for the court to grant a special set fee of $5,500.00 rather than the Local Rule $4,000.00 maximum amount was filed on January 3, 2020. As discussed below, this request appears to be one in which counsel wants to create a $5,500 "no-look" fee for him, while leaving other attorneys to have to live by the Local Rules.

The actual services to be provided are consistent with those for the $4,000.00 "no-look" fixed fee. Counsel adds additional items, which could potentially be tens of thousands of dollars of additional fees (some of which could be recovered from other parties) for additional work. This additional work, to be done for $1,500 includes:

A. Litigating All Objections to Claims

B. Litigate Motions For Relief From the Automatic Stay

C. Review and Apparently Litigate Notices of Mortgage Payment Change, Wrongful Threats of Foreclosure, and Mortgage Modifications.

D. Litigate Motions to Value (without regard to whether evidentiary hearings are required)

E. Litigate Motions to Avoid Liens (without regard to whether evidentiary hearings are required)

While the court does not doubt counsel's good intentions in seeking a higher fixed fee, the court does not find this request reasonable. Instead, the fixed fee would effectively neuter counsel and his client to litigate these issues. In effect, counsel and debtor would be waiving the right to recover attorneys' fee pursuant to contractual or statutory provisions, attorney having agreed to "do it all" for an extra $1,500.

The above is clearly not reasonable. The only time it would be reasonable is when the attorney would do no more work than what is already required under the Local Bankruptcy Rules for the "no-look" fee.

**DENIAL OF MOTION**

The court agrees with several of Trustee's concerns. The Flat Free Arrangement is not reasonable - both for the Debtor and for Counsel. The broad required to be performed legal services for a "mere" $1,500 is not reasonable.

It is interesting that the Motion was filed shortly after the case was filed, well before any claims were filed or problems crawled out of the shadows. The promise to do future work is not an informed promise.

Also, it concerns the court when a debtor and counsel would appear to vitiate statutory and contractual attorneys' fees provisions where the consumer's attorney basically contracts to "do it for free." Possibly it is the judge's background in connection with statutory and contractual attorneys' fees provisions that highlights the issue, something that the "normal" consumer attorney does not regularly deal with.

The motion is denied.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Mikalah R. Liviakis ("Applicant"), Attorney for Laurie Yoder, Chapter 13 Debtor, ("Client") 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.

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| **2.** | **19-27894-E-13 MRL-1** | **MICHAEL/KINDRA DICKERMAN Mikalah Liviakis** | **MOTION FOR COMPENSATION BY THE LAW OFFICE OF LIVIAKIS LAW FIRM FOR MIKALAH RAYMOND LIVIAKIS, DEBTORS ATTORNEY(S) 1-3-20 [11]** |

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 3, 2020. By the court's calculation, 25 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00).

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

**The Motion for Allowance of Professional Fees is denied.**

Mikalah R. Liviakis, the Attorney ("Applicant") for Michael Calvin Dickerman and Kindra Kay Dickerman, Chapter 13 Debtors ("Client"), requests Allowance of Fees under a Flat Fee Agreement for $5,500.00 in this case.

Pre-petition, Debtors made a $400.00 deposit for costs of filing including the court filing fee. Debtors proposes to pay $5,500.00 through the Chapter 13 Plan.

Fees are requested for the services to be provided through the end of the bankruptcy case, with the exception of: (1) defending Debtor against any complaint filed by the trustee or any other party in interest to deny Debtor's discharge; (2) defending Debtor against any complaint filed by any creditor to except its debt from discharge; (3) defending Debtor against any complaint filed by the trustee to

avoid or to recover any transfer of property which Debtor made before the filing of Debtor's bankruptcy petition; (4) prosecuting any complaint which Debtor is obligated to file for a determination that any indebtedness is dischargeable; (5) appealing any order of judgment which is entered against Debtor; (6) any legal work necessary after Debtor's chapter 13 case is closed, converted, dismissed.

**TRUSTEE'S RESPONSE**

Trustee filed a Response on January 14, 2020. Dckt. 15. Trustee agrees that the court may approve a flat free arrangement. Further, while Federal Rule of Bankruptcy Procedure 2016(a) requires an application for compensation or reimbursement to include time expended, if the court approves the agreement for the flat fee no additional motion would be needed. However, Trustee then proceeds to list his concerns related to the present flat free agreement for $5,500.00.

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**APPLICABLE LAW**

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**FEES AND COSTS & EXPENSES REQUESTED**

**Fees**

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Denial of Higher Fixed Fee

Counsel argues that compensation is reasonable based on the customary compensation: The Pre-Approved Flat Fee in the Eastern District of CA according to the Rights and Responsibilities and Local Rules is $4,000 for all case work, plus additional fees for significant and unanticipated work. In contrast, in the present case Attorney seeks approval of a $5,500 flat fee, for pre and post-petition work as reasonable compensation in light of three factors:

(1) The flat fee in this case precludes additional compensation with the exception of the litigation items listed above,

(2) Attorney has considerable bankruptcy experience and charges $385 for hourly billings,

(3) This case includes mortgage debt (which often requires significant work in terms of modified mortgage payments, loan modifications, sale of property, proof of claim objections).

This case was filed on December 23, 2019. This motion for the court to grant a special set fee of $5,500.00 rather than the Local Rule $4,000.00 maximum amount was filed on January 3, 2020. As discussed below, this request appears to be one in which counsel wants to create a $5,500 "no-look" fee for him, while leaving other attorneys to have to live by the Local Rules.

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A. Litigating All Objections to Claims

B. Litigate Motions For Relief From the Automatic Stay

C. Review and Apparently Litigate Notices of Mortgage Payment Change, Wrongful Threats of Foreclosure, and Mortgage Modifications.

D. Litigate Motions to Value (without regard to whether evidentiary hearings are required)

E. Litigate Motions to Avoid Liens (without regard to whether evidentiary hearings are required)

While the court does not doubt counsel's good intentions in seeking a higher fixed fee, the court does not find this request reasonable. Instead, the fixed fee would effectively neuter counsel and his client to litigate these issues. In effect, counsel and debtor would be waiving the right to recover attorneys' fee pursuant to contractual or statutory provisions, attorney having agreed to "do it all" for an extra $1,500.

The above is clearly not reasonable. The only time it would be reasonable is when the attorney would do no more work than what is already required under the Local Bankruptcy Rules for the "no-look" fee.

**DENIAL OF MOTION**

The court agrees with several of Trustee's concerns. The Flat Free Arrangement is not reasonable - both for the Debtor and for Counsel. The broad required to be performed legal services for a "mere" $1,500 is not reasonable.

It is interesting that the Motion was filed shortly after the case was filed, well before any claims were filed or problems crawled out of the shadows. The promise to do future work is not an informed promise.

Also, it concerns the court when a debtor and counsel would appear to vitiate statutory and contractual attorneys' fees provisions where the consumer's attorney basically contracts to "do it for free." Possibly it is the judge's background in connection with statutory and contractual attorneys' fees provisions that highlights the issue, something that the "normal" consumer attorney does not regularly deal with.

The motion is denied.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Mikalah R. Liviakis ("Applicant"), Attorney for Michael Calvin Dickerman and Kindra Kay Dickerman, Chapter 13 Debtors, ("Client") 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.

| | | | |
|---|---|---|---|
| **3.** | **19-27100-E-13<br>DPC-1** | **JOJO/MARIAFE GUINTU<br>Marc Caraska** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK<br>12-20-19 [15]** |

**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 December 20, 2019. By the court's calculation, 39 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 provide his full name on the Petition.

B. Debtor's plan fails the liquidation analysis test.

C. There are concerns regarding Debtor's Attorney "no-look" fee.

**DISCUSSION**

Trustee's objections are well-taken.

**No Middle Name Provided**

Debtor failed to include his middle name on the Petition. At the Meeting of Creditor's, Debtor admitted that his middle name is "Montano." Failure to provide the full name may prevent

creditors from identifying this Debtor.

**Debtor Fails Liquidation Analysis**

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor's plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). The Chapter 13 Trustee states that Debtor has supplied insufficient information relating to assets to assist the Chapter 13 Trustee in determining the value of the assets. Debtor fails to report on Schedule B that he owns free and clear a 2008 Nissan Armada and a 2014 Nissan Rogue. Debtor also indicated on Schedule B that they had no household goods and furnishings, electronics, clothes, cash, and bank accounts. Trustee is uncertain as to whether Debtor actually read and reviewed the Petition documents or the Plan. No signature appears on the Plan even in electronic format.

**"No-Look" Fee**

Under Local Bankruptcy Rule 2016(a), compensation paid to attorneys for the representation of chapter 13 debtors is determined according to 2016-1(c), which provides for fixed fees approved in connection with plan confirmation. However, if a party in interest objects, such as the trustee, compensation is determined in accordance with 11 U.S.C. §§ 329 and 330.

Trustee objects to a "no-look" fee in this case on the basis that deficiencies exist in the plan, schedules, and statement of financial affairs. Trustee is concerned at the appearance that Counsel might not be spending sufficient time on the case.

Thus, counsel's fees will be reviewed under the standard loadstar analysis.

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.

| | | | |
|---|---|---|---|
| **4.** | **19-27416-E-13 TOG-2** | **VICTOR CRUZ CHAVEZ AND OLVERA MONTSERRAT** **Thomas Gillis** | **MOTION TO CONFIRM PLAN 12-20-19 [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.

---

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and the Office of the United States Trustee on December 20, 2019. By the court's calculation, 39 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

**The Motion to Confirm the Plan is denied.**

Victor Cruz Chavez and Olvera Montserrat ("Debtor") seek confirmation of the Chapter 13 Plan. The Plan provides for monthly payments of $250.00 for 36 months, and a 1% percent dividend for unsecured claims totaling $112,683.90. Plan, Dckt. 27. 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 30, 2019. Dckt. 29. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor is delinquent in plan payments.

B. Debtor unfairly discriminates as to a general unsecured claim.

C. Debtor's Plan does not account for tax refunds or additional income from dependants.

D. Debtor's Attorney's fees should not be approved.

E. Debtor's might fail to attend the § 341 meeting.

**DISCUSSION**

**341 Meeting**

Debtor might not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Appearance is mandatory. *See* 11 U.S.C. § 343. Attempting to confirm a plan while failing to appear and be questioned by the Chapter 13 Trustee and any creditors who appear represents a failure to cooperate. *See* 11 U.S.C. § 521(a)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

The Meeting of Creditors was held on January 9, 2020, and the Chapter 13 Trustee's Report indicates Debtor appeared. The Chapter 13 Trustee has filed nothing further, and the court therefore determines that Debtor's appearance has resolved this ground for opposing confirmation.

**Delinquency**

Debtor is $250.00 delinquent in plan payments, which represents one month of the $250.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

**Unfair Discrimination Against Unsecured Claims: Wells Fargo**

The Chapter 13 Trustee also opposes confirmation due to possible unfair discrimination to unsecured claims under 11 U.S.C. § 1322(b)(1). Debtor proposes to pay Wells Fargo directly as a Class 4.

However, Debtor's Schedule D shows that Wells Fargo's claim is $12,090.00 secured and $3,061.00 unsecured. Debtor's Plan proposes to pay less than 1% to unsecured claims. Thus, by Debtor providing for Wells Fargo, this appears to be unfair discrimination towards all other unsecured claims, contrary to 11 U.S.C. § 1322(b)(1).

**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.

Debtor provided Trustee with state and federal tax returns for 2017 & 2018, which show over

$4,000.00 of tax refunds each year. The Plan does not propose to pay these tax refunds into the Plan. Additionally, Debtor claimed two adult children as dependents on their tax return. These children are not disclosed as dependents on Debtor's Schedule J. Dckt. 23. Therefore, the court is unable to determine if these dependants have additional income.

**Attorney Fees**

Trustee opposes approval of any fees for future work where Debtor's Attorney has been suspended from practice of law beginning January 31, 2020 until reinstated.

On December 2, 2019 Counsel for Debtor notified the court of his suspension from practice of law beginning January 31, 2020 until reinstated. Dckt. 14. The State Bar of California website shows Counsel is presently active and his suspension begins February 1, 2020. *See* http://members.calbar.ca.gov/fal/Licensee/Detail/40186.

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

| | | | |
|---|---|---|---|
| **5.** | **19-27819-E-13 MRL-1** | **RICHARD ASTRAN AND LISA ZAPIEN-ASTRAN Mikalah Liviakis** | **MOTION TO VALUE COLLATERAL OF PRESTIGE FINANCIAL SERVICES, INC. 1-1-20 [13]** |

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, creditor, and Office of the United States Trustee on January 2, 2020. By the court's calculation, 24 days' notice was provided. 14 days' notice is required.

On the Certificate of Service, Movant states that Prestige Financial Services, Inc. was served at the address for its agent for service of process. The Certificate of Service, Dckt. 16, states:

> Attention: Officer, managing or general agent, or to any other agent authorized by appointment or by law to receive service of process
> Registered Agent Solutions, agent for service of process for **Prestige Financial Solutions, Inc**.
> 2005 East 2700 South Suite 200
> Salt Lake City, UT 84109

While it appears there is a typographical error in the Certificate of Service, the Motion accurately names the creditor that is the subject of the Motion as Prestige Financial Services, Inc.

The California Secretary of State reports that the agent for service for Prestige Financial Services, Inc. is Registered Agent Solutions, Inc. [FN. 1] Following the link to the page for Registered Agent Solutions, Inc. and the most recent Form 1505 stating that the address to be used when Registered Agent Solutions, Inc. when it serves as an agent for service of process is: 1220 G Street, Suite 150, Sacramento, California.

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FN. 1. https://businesssearch.sos.ca.gov/CBS/Detail.
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Going to the Utah Secretary of State's website, a search of Prestige Financial Services, Inc. discloses that the Secretary of State reports that it is an active corporation in Utah. It also states that Registered Agent Solutions is the agent for service of process, with the address of 2005 East 2700 South Ste 200, Salt Lake City, Utah 84109. This is the address used by Movant.

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

**The Motion to Value Collateral and Secured Claim of Prestige Financial Services, Inc. ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $8,400.00.**

The Motion filed by Richard Astran and Lisa Yvette Zapien-Astran ("Debtor") to value the secured claim of Prestige Financial Services, Inc. ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 15. Debtor is the owner of a 2015 Ford Fiesta ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $8,400.00 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).

**TRUSTEE'S RESPONSE**

Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response on January 13, 2020. Dckt. 17. Trustee requests the court consider that the Vehicle is included in Class 2(B) of the proposed Plan with a claimed amount of $15,933.00 and value of $8,400.00. Additionally, Creditor has not yet filed a claim.

**DISCUSSION**

The lien on the Vehicle's title secures a purchase-money loan incurred on July 2015, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $15,933.00. Declaration, Dckt. 15. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of $8,400.00, 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 Richard Astran and Lisa Yvette Zapien-Astran ("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 Prestige Financial Services, Inc. ("Creditor") secured by an asset described as 2015 Ford Fiesta ("Vehicle") is determined to be a secured claim in the amount of $8,400.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $8,400.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

**6.** **19-26523-E-13 DPC-1** **JULIAN HARDY** **Richard Jare** **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK** **12-9-19 [29]**

**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 December 9, 2019. By the court's calculation, 36 days' notice was provided. 14 days' notice is required.

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

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

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

A. Debtor failed to provide tax transcript or copy of federal income tax return.

B. At the meeting of creditors, Debtor testified that he failed to file tax returns for the last four years.

**DISCUSSION**

Trustee's objections are well-taken.

**Failure to Provide Tax Returns**

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

**Failure to File Tax Returns**

Debtor admitted at the Meeting of Creditors that the federal income tax returns for the tax years of 2014 through 2018 have not been filed still. Filing of the return is required. 11 U.S.C. §§ 1308, 1325(a)(9). Failure to file a tax return is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

The Trustee confirmed that copies of returns have been provided, but does not appear that they have been filed. The Trustee concurred in continuing the hearing to allow Debtor the opportunity to present documentation that the returns have been filed, not merely the Debtor stating that such returns have been filed given the proof of claim filed by the Internal Revenue Service which states that the returns have not been filed.

**OPPOSITION**

No opposition has been filed by Debtor. However, a Declaration has been filed in which Debtor states under penalty of perjury that tax returns for the years 2015, 2016, 2017, and 2018 were filed on December 17, 2019.

~~The Opposition is sustained/overruled and the plan is/is not confirmed.~~

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

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

~~The Objection to Confirmation filed by David Cusick, the Chapter 13 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 Motion is ---------.~~

**7.** **18-25929-E-13** **JEFFREY YOUNG** **MOTION TO MODIFY PLAN**
**BLG-3** **Chad Johnson** **11-7-19 [71]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 07, 2019. By the court's calculation, 62 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

**The Motion to Confirm the Modified Plan is denied without prejudice.**

The debtor, Jeffrey Young ("Debtor") seeks confirmation of the Modified Plan on the basis that his living expenses have decreased after moving to Iowa. His readjusted budget will allow him to get back on track with the plan payments. Declaration, Dckt. 74. The Modified Plan provides for monthly payments of $588.00 for 48 months beginning October 2019, and a 0.00% dividend to unsecured claims totaling $37,111.33. Modified Plan, Dckt. 73. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

**CHAPTER 13 TRUSTEE'S OPPOSITION**

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on January 07, 2020. Dckt. 79.

**DISCUSSION**

**Section 7 for Non-Standard Provisions**

Debtor states that as of September 2019 (month 12), Debtor has paid $0.00 into the Plan. According to Trustee, the correct total paid in as of month 12 is $2,225.00.

The court interprets Debtor's entry as pointing out that since his last payment in July 2019, Debtor has paid $0.00 into the Plan. Not that Debtor has overall paid $0.00 into the Plan.

**Motion's Notice**

Trustee points out that Debtor's notice does not comply with Local Rule 9014-1(d)(3)(B)(iii), as it fails to advise respondents about the ability to review pre-hearing dispositions.

Trustee is correct. The Motion's notice does not comply with Local Rule 9014-1(d)(3)(B)(iii).

**Delinquency**

The Chapter 13 Trustee asserts that Debtor is $1,764.00 delinquent in plan payments, which represents multiple months of the $588.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

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

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

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

**8.** **19-25945-E-13 DPC-1** **CHARLENE OJASCASTRO** **Richard Jare** **CONTINUED 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.

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

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.

**STATUS REPORT**
**JANUARY 21, 2020**

Debtor's counsel filed a Status Report on January 21, 2020. Dckt. 33. Counsel informs the court that he is aware that Debtor has failed to make the $2,850.00 plan payment for the months of

November, December and that it is possible that Debtor will be unable to make a payment for January 2020.

Further, Counsel informs this court that he has reached out to Debtor and encouraged her to submit a year of bank statements to disprove Trustee's contention of disposable income. After these efforts, Counsel has not received anything from Debtor that can be filed or submitted. Thus, Counsel agrees that based on the above, the proposed plan is not confirmable.

**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.

**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.

**9.** **17-20954-E-13** **NICOLE PIERCE** **MOTION TO MODIFY PLAN**
**MRL-1** **Mikalah Liviakis** **12-3-19 [21]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 3, 2019. By the court's calculation, 56 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

**The Motion to Confirm the Modified Plan is xxxxx.**

The debtor, Nicole Chantel Pierce ("Debtor") seeks confirmation of the Modified Plan is to increase payments to creditors because Debtor recently changed jobs, received a severance, and more monthly income. Declaration, Dckt. 23. The Modified Plan provides plan payments for 14 months of $720, then $820.00 for 18 months, followed by $1,600.00 for 28 months, and a 22% percent dividend to unsecured claims totaling $132,485.00. Modified Plan, Dckt. 24. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

**CHAPTER 13 TRUSTEE'S OPPOSITION**

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on January 7, 2020 Dckt. 27. Trustee opposes confirmation on the basis that Debtor is delinquent in payments.

**DISCUSSION**

**Delinquency**

Debtor is $200.00 delinquent in plan payments, which represents less than one month of the

$1,600.00 plan payment. Trustee informs the court that there is a pending transaction for January 16, 2020 within TFS for $1,600.00. If this payment posts Debtor will be current through December but not include the entire January 2020 payment of $1,600.00.

Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

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

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

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

**10. 19-27368-E-13 MARTIN GOMEZ** **MOTION TO CONFIRM PLAN**
**Tom Gillis** **12-20-19 [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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 20, 2019. By the court's calculation, 39 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

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

The debtor, Martin Gomez ("Debtor") seeks confirmation of the Chapter 13 Plan. The Plan provides for plan payments in the amount of $220.00 for 36 months and a 5% percent dividend for unsecured claims totaling $34,450.00. 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"), opposes confirmation of the Plan on the basis that:

A. Debtor is delinquent in payments.

B. Debtor's Attorney is suspended from practicing law, thus attorney fees should be denied.

**DISCUSSION**

**Delinquency**

Debtor is $220.00 delinquent in plan payments, which represents one month of the $220.00 plan payment. Before the hearing, another plan payment will be due. According to Trustee, the Plan in § 2.01 calls for payments to be received by Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

**Attorney Fees**

Under Local Bankruptcy Rule 2016(a), compensation paid to attorneys for the representation of chapter 13 debtors is determined according to 2016-1(c), which provides for fixed fees approved in connection with plan confirmation. However, if a party in interest objects, such as the trustee, compensation is determined in accordance with 11 U.S.C. §§ 329 and 330.

Trustee objects to the "no look" fee in this case. Trustee opposes approval of the "no look" fee and of any future work on the basis that Debtor's Attorney has been suspended from practice of law beginning January 31, 2020. (Upon checking the State Bar of California website, Debtor's Attorney's suspension has been delayed until February 1, 2020. *See* http://members.calbar.ca.gov/fal/Licensee/Detail/40186.)

Thus, counsel's fees will be reviewed under the standard loadstar analysis.

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

**11.** **19-27175-E-13 RAS-1** **ADAM/SHERRI NEWLAND** **Peter Macaluso** **OBJECTION TO CONFIRMATION OF PLAN BY DEUTSCHE BANK NATIONAL TRUST COMPANY** **12-23-19 [14]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on December 23, 2019. By the court's calculation, 36 days' notice was provided. 14 days' notice is required.

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

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

Deutsche Bank National Trust Company, As Trustee For Harborview Mortgage Loan Trust, Mortgage Loan Pass-Through Certificates, Series 2007-5 ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

A. Debtors' Chapter 13 Plan does not promptly cure creditor's pre-petition arrearage.

**DISCUSSION**

Creditor's objection is well-taken.

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts $37,801.02 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.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by Deutsche Bank National Trust Company, As Trustee For Harborview Mortgage Loan Trust, Mortgage Loan Pass-Through Certificates, Series 2007-5 ("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.

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 November 8, 2019. By the court's calculation, 39 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

**The Motion to Confirm the Amended Plan is xxxxx.**

The debtor, Denese Elizabeth Balmer ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for monthly payments of $650.00 for 60 months with a 20% dividend to unsecured creditors totaling $28,774.94. Amended Plan, Dckt. 37. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

**CHAPTER 13 TRUSTEE'S / CREDITOR'S OPPOSITION**

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on December 3, 2019. Dckt. 44.

**CHAPTER 13 TRUSTEE'S STATUS REPORT**

Trustee filed a Status Report on December 23, 2019. Dckt. 56. Trustee indicates that he still opposes confirmation on the basis that this Plan might not be Debtor's best effort.

There are errors in Debtor's Schedules regarding expenses; Debtor has not adequately explained the public transportation expense of $217.00 per month; and has failed to thoroughly explain charity contributions. Finally, makes a special request that in the event the court overrules the objection, Debtor should provide copies to the Trustee of tax returns filed and annual supplemental Schedules I and J as provided under 11 U.S.C. § 521(f).

**DISCUSSION**

**Plan Feasibility**

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). The Plan may not be feasible on the basis that Debtor fails to adequately explain her expenses. The Amended Schedule J shows seven changes from the original filed on September 11, 2019, yet Debtor does not explain any of these changes in her declaration.

At the Meeting of Creditors, Debtor explained that her transportation expenses lessened due to job relocation but no other explanation has been provided for the other changes. Debtor removed the car payment expense listed on the Original Schedule J but her monthly disposable income remains at $650.37. Trustee argues that with removal of this expense, Debtor should have the ability to pay more into the Plan.

Additionally, Trustee argues that Debtor appears above median income. Debtor claims an additional public transportation expense of $217 without explanation. Debtor also claims a continuing charity expense of $500.00, but this item does not appear in the last two years on the Statement of Financial Affairs. Trustee contends that if these deductions are not allowed, Debtor will have a positive monthly disposable income under §1325(b)(2) of $674.76

Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

The Amended Plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is Continued to January 28, 2020 at 3:00 p.m.

**13. 19-24802-E-13 CK-6 GREGORY/CHO FRENCH Catherine King MOTION TO CONFIRM PLAN 12-21-19 [96]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 21, 2019. By the court's calculation, 38 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

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

The debtors, Gregory Wayne French and Cho Yon French ("Debtor"), seek confirmation of the Amended Plan. The Amended Plan provides for five (5) plan payments of $4,670.00 then 45 plan payments of $5,036.00, and a 100% percent dividend for unsecured claims totaling $123,577.00. Amended Plan, Dckt. 100. 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 January 10, 2020. Dckt. 104. The Trustee asserts that 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 65 months due to the priority claim #28 of the Internal Revenue Service for $40,785.50, where the Plan estimated only $28,226.06. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d)

**DEBTORS' DECLARATION**

Debtor filed a declaration on January 22, 2020. Dckt. 106. In their Declaration, Debtor

testified under penalty of perjury that Debtor "understands" that Debtor is in default in plan payments, but intend to bring the payments current prior to the hearing on the Motion to Confirm.

Debtor's testimony then provides a statement of the 4th Amended Plan terms, with Debtor stating that the 4th Amended Plan states that the plan payments will be $4,670.00 a month for five months and then increase to $5,036.00 for forty-five months. Declaration, p. 2:8-12; *Id.*

**DISCUSSION**

**Failure to Complete Plan Within Allotted Time**

In asserting the Opposition that Debtor's plan will complete in 65 months, Trustee states that Debtor's Plan calls for a monthly payment of $4,670.00.

Debtor counters that the Plan calls for five (5) monthly payments of $4,670.00, followed by 45 payments of $5,036.00.

Trustee was not wrong. The Plan under Section 2 calls for $4,670.00 monthly payments and that the Plan is 50 months in duration. However, paragraph 1.02 of the Plan is checked, which states that non-standard provisions are included in the Section 7 Additional Provisions.

In Section 7 - the Non Standard Provisions for Section 2 are stated as: "Payments into the plan shall be as follows: $4,670.00 per month for 5 months, $5,036.00 per month for 45 months."

Thus, it seems that with that adjustment, the Plan will complete in 50 months.

**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): the plan may not be feasible due to Debtor's Retirement Fund Loans as it is uncertain to what the actual amount of the loan payment is, and when the loan will end, due to the Debtor's continued failure to provide current pay stubs to the Trustee. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

According to Debtor's Declaration, the loan has been repaid. Trustee should receive a current pay stub that reflects this facts so that the Trustee and the court have an accurate picture of Debtor's financial reality.

At the hearing, **xxxxxxxxxx**

**Failure to Provide Pay Advices**

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

Debtor's state in their declaration that this issue has been cured and that they have sent copies

of Debtor Cho French's July 2019 pay stubs.

At he hearing, **xxxxxxxxxx**

**Delinquency**

The Chapter 13 Trustee asserts that Debtor is $3,000.00 delinquent in plan payments, which represents a portion of one month of the $4,675.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Unfortunately for Debtor, a promise to be current by the day of the hearing is not evidence that solves the issue at hand.

At the hearing, **xxxxxxxxxx**

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, Gregory Wayne French and Cho Yon 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.

**14. 19-21310-E-13 WANDA COLLIER-ABBOTT**
**Richard Jare**

**CONTINUED MOTION TO CONFIRM PLAN**
**10-28-19 [112]**

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, 50 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

**The Motion to Confirm the Modified Plan is xxxxx.**

The debtor, Wanda Collier-Abbott ("Debtor") seeks confirmation of the Modified Plan because her previous plan had been denied and these payments are feasible and it is close to the most that she can afford to pay. Declaration, Dckt. 114.

The proposed Modified Plan provides$2,100.00 to be paid for each of the first 6 months, thereafter pay the monthly sum of $2,500.00 for one (1) month and thereafter pay $2,750.00 then commencing month #16, the payment shall be $2,430.00 per month, and a 0 percent dividend to unsecured claims totaling $5,000.00. Modified Plan, Dckt. 115. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

**CREDITOR'S OPPOSITION**

Real Time Solutions, Inc. ("Creditor") holding a secured claim filed an Opposition on November 26, 2019. Dckt. 127. Creditor asserts that the full obligation owed under the Note is do in full during the term of this proposed Plan. Since Creditor's only collateral is the Debtor's primary residence and there is value in the property for its secured claim, Debtor cannot reduce Creditor's claim. Further, that Creditor has not agreed to being paid on its claim an amount less than the full amount of the obligation.

Creditor further opposes the Plan because it provides that Debtor will not fund the plan with a sale of Creditor's collateral until the thirty-sixth and final month of the Plan.

Creditor asserts the Plan is not feasible because Debtor does not have sufficient income, is not employed, and makes "educated guesses" as to what future income may be.

**CHAPTER 13 TRUSTEE'S OPPOSITION**

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on December 2, 2019. Dckt. 129. The Trustee first states an opposition to Debtor's counsel being paid a "no look" fee in this case.

Next, the Trustee states that Debtor is delinquent $2,750.00 in the payments due under the proposed Plan.

The Trustee notes that two prior plans proposed by Debtor have been denied confirmation and Debtor does not address how the current plan has addressed the prior problems that prevented confirmation.

The Trustee then notes that the proposed Plan includes an "Ensminger Provision," but is substantially modified. The "Ensminger Provision" is an adequate protection plan provision that was worked out almost ten years ago between the debtor and creditor communities. It is a "simple" provision that has a debtor make an adequate protection payment in an amount equal to what would be the monthly under a loan modification that a debtor was diligently prosecuting.

The Trustee assert that the additions are so substantial that Debtor's counsel should be required to provide a points and authorities explaining such changed provisions and that such are proper under the Bankruptcy Code.

The Trustee asserts that the proposed plan, which requires a series of $2.500 +/- a month payments and then a $167,000 lump sum "no later than the thirty-sixth month" from a sale or refinance is speculative and not consistent with Chapter 13. While the Debtor could promptly liquidate the residence as part of a Chapter 13 plan in a commercially reasonable manner, Trustee contends that taking thirty-six months is not reasonable.

Finally, the Trustee asserts that the Plan is not feasible, in addition to the above, in that Debtor does not have monthly income to fund the plan and has not shown how she will have such in the future.

**CREDITOR'S OPPOSITION**

The Bank of New York Mellon ("Creditor Mellon") holding a secured claim filed an Opposition on December 3, 2019. Dckt. 135. Creditor Mellon objects to there being a thirty-six month "adequate protection" period while Debtor either sells or modifies the obligations secured by the collateral.

**DEBTOR'S DECLARATION**

Debtor filed a Declaration on January 21, 2020. Dckt. 148. Debtor proceeds to testify under penalty of perjury as to "facts" that "Richard Jare [Debtor's attorney] has told me. . . ." Declaration, p. 1:21-22; *Id.* As provided under the Federal Rules of Evidence, merely repeating what another person has said is "mere" hearsay. Fed. R. Evid. 801, 802. In addition, Debtor choosing to voluntarily disclose communications to her by her attorney may have not waived the attorney-client privilege.

**DEBTOR'S COUNSEL'S RESPONSE**

Debtor's Counsel filed a Response on January 21, 2010. Dckt. 149. Debtor Counsel urges the court to call the Trustee to be present in person on the January 28 hearing to talk about Trustee's objection, specifically, Trustee's objection to Counsel's "no look" fee. Debtor's counsel does not provide any argument about attorneys' fees in this case.

**DISCUSSION**

Creditors's and Trustee's concerns are well taken. There are several issues with Debtor's Modified Plan.

Beginning with attorneys' fees, in a Chapter 13 case a debtor's counsel's fees will be determined under the "no look" provisions unless the attorney opts out or a party in interest (which includes the Trustee) objects. L.B.R. 2016-1 (a). The Trustee has objected and now counsel must request to have fees approved by the court. Such may be hourly, a set fee, or such other method as is reasonable.

Local Bankruptcy Rule 2016-1 does not include a "meet and discuss in open court" provision.

**Delinquency**

The Chapter 13 Trustee asserts that Debtor is $2,750.00 delinquent in plan payments, which represents one month of the $2,750.00 plan payment. According to the Chapter 13 Trustee, the Plan in §2.01 calls for payments to be received by the Chapter 13 Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. See 11 U.S.C. § 1325(a)(6).

**Ensminger Provisions**

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 there is additional language that is not normally part of the authorized language.

With respect to the Bank of New York Mellon claim, the proposed terms of the Additional Provisions in the Plan (Dckt. 115 at 8) include:

A. Monthly Adequate Protection payment proposes payments of $665.38 to

escrow for taxes and insurance.

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.

Failure to Cure Arrearage of Creditor- Bank of New York Mellon

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 $37,354.41 in pre-petition arrearage. The Plan fails to cure those arrearage in that the Plan proposes to cure those arrears either through a loan modification or through the refinance or sale of the Property by month 36 of the Plan. However, the Plan does not provide an actual time frame in which any of these actions will happen. Debtor does not provide any explanation as for the need for the long delay in the sale of the Property. Creditor asserts this delay is unacceptable.

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.

Payment of Secured Claims

The use of the Ensminger Provision allows a debtor in good faith to make what would be the full monthly payments under a loan modification that is being diligently prosecuted in good faith. Such provision arose out of a perception that some creditor were wrongfully not processing loan applications to doom Chapter 13 plans before bankruptcy judges who required the full amount the unmodified payment be made to confirm a plan.

When the discussions began on the drafting of the Ensminger Provision, creditors feared that it would be misused to abuse the Bankruptcy Code and have the debtor put in a de facto modification of a creditor's claim and have monthly de minimis "adequate protection payments" while the debtor enjoyed the use of the real property with no good faith intention to actually pay the obligation even if modified.

Fortunately, the representatives of the consumer and creditor communities negotiated in good faith and developed the Ensminger Provision that allows the good faith debtor to diligently prosecute a loan modification, and the good faith creditor to review the loan modification promptly.

In reviewing the Second Amended Plan (Dckt. 115), the court considers the Plan treatment for the claims secured by Debtor's residence. In Class 2 (B) Debtor lists the Real Time Resolutions Claim, stating the balance to be $221,536, with there being an arrearage of $158,143. 2nd Amended Plan, ¶ 3.09; Dckt. 115. For payment of the claim, this section directs one to the Additional Provisions

in Section 7.

For the Real Time Resolution Claim, it states that there will be a payment of $350 a month for thirty-five months and then the allowed claim of what is alleged to be the value of the collateral will be paid "by" the thirty-sixth month.

For Creditor Mellon, it's claim will receive a monthly plan disbursement of $1,590 for the first five months of the Plan and then $1,856.41 for months six through thirty five. Of this, $665 a month will be used to pay property taxes and insurance.

What Debtor has attempted to do with this proposed plan is make a $350 a month payment to one creditor with a claim secured by her residence and then another $1,200 a month , while Debtor continues and uses the residence for a $1,550 a month payment. In substance, Debtor is paying $1,550 a month of "rent" for property which is stated on Schedule A/B to have a value of $470,000. Dckt. 27 at 2.

The two claims secured by the residence property significantly exceed the value. One of the devices used by the court in evaluating whether the proposed short term adequate protection payment while a debtor diligently prosecutes a loan modification (in the rare, rare circumstances when a debtor and creditor do not agree with the proposed amount) is to compute what would be the monthly payment of principal and interest if the creditor(s) agreed to reduce the loan to the value of the collateral and amortize it over thirty years.

Taking the $470,000 and using a 3.75% interest rate (which would be for a borrower with good credit and providing a down payment), the monthly principal and interest payment would be $2,209. [FN. 1.]

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FN. 1. This was computed using the Microsoft Excel Loan program.

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Here, Debtor is only proposing to make a $1,550 "adequate protection payment" to live in the house for more than three years. That is not "adequate."

**Plan is Not Feasible**

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Trustee contends that the Plan is not feasible because the Plan proposes the refinance or sale of the Property. Further arguing that this sale or refinance appears speculative or as a delay, as the Plan fails to provide an actual time frame in which any of these actions will take place or why it should take 36 months to sell or refinance.

Trustee further asserts that the Debtor cannot make the plan payment because the current Schedule J indicates a net income of $2,100.00 per month. This amount is not enough as the Plan calls for payments of $2,750.00 per month for eight (8) months.

On Supplemental Schedule I, Dckt. 28 at 10-11, Debtor states that she has income of $6,951 a month. Of this $1,000 is "roommate contribution. Another $2,004 a month is for temporary work as

an administrative assistant. There is another $2,000 for net rent or business income. Attached to Supplemental Schedule I is a Business Income and Expense Schedule. This states a monthly income of $2,850 and expenses of ($850) yielding the $2,000 a month net business income. There is $939 a month in income from IHSS for being Debtor's mother's care giver.

On Supplemental Schedule J, Debtor list shaving five dependents - two adult children (21+ years), two eighteen year old children (including a stepchild), and Debtor's mother. It does not appear that any of the adults provide any of their income to Debtor for their expenses.

There appears to be a glaring absence on Schedule I and J for the $5,124 of business and employment income (not including the IHSS income) - no provision is made for any self-employment or income taxes.

Even without paying income or self-employment taxes, Debtor is strained to show the $2,100 in monthly net income to fund the "adequate protection payment" plan.

Debtor has demonstrated that he plan is not feasible.

**Failure to Provide for a Secured Claim**

Two creditor assert claim over Debtor's principal residence. Creditor Bank of New York Mellon asserts a claim of $312,589.38 in this case. Debtor's Schedule D estimates the amount of Creditor's claim as $311,857.00 and indicates that it is secured by a first deed of trust on Debtor's residence. Creditor Real Time Resolutions, Inc. asserts a claim of $221,536.60 in this case. Debtor's Schedule D estimates the amount of Creditor's claim as $124,857.00 and indicates that it is secured by a second deed of trust on Debtor's residence. The Plan provides for treatment of this as a Class 2 claim, but (because Debtor asserts that it is subject to a claims valuation pursuant to 11 U.S.C. § 506(a)), proposes to pay a $0.00 monthly dividend on account of the claim.

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

11 U.S.C. § 1322(a) is the section of the Bankruptcy Code that specifies the mandatory provisions of a plan. It requires only that a debtor adequately fund a plan with future earnings or other future income that is paid over to 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 claim holder may seek termination of the automatic stay so that it may repossess or foreclose upon its collateral. The absence of a plan provision is good evidence that the collateral for the claim is not necessary for the debtor's rehabilitation and that the claim will not be paid. This is cause for relief from the automatic stay. See 11 U.S.C. § 362(d)(1).

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

**The proposed 2nd Amended Plan does not comply with** 11 U.S.C. § 1325 and § 1322. The Motion is denied and the plan is not confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the 2nd Amended Plan filed by Wanda Collier-Abbott 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 is denied.

**15.** **19-27920-E-13 DAO-1** **MICHAEL MULLINS** **Dale Orthner** **CONTINUED MOTION TO IMPOSE AUTOMATIC STAY** **12-26-19 [10]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on December 26, 2019. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

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

**The Motion to Impose the Automatic Stay is granted.**

Michael Roy Mullins ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) imposed in this case. This is Debtor's third bankruptcy petition pending in the past year with the prior two cases having been dismissed. Debtor's prior bankruptcy cases (Nos. 2018-26630 and 2019-23988) were dismissed on March 25, 2019, and October 8, 2019, respectively. *See* Order, Bankr. E.D. Cal. No. 18-26630, Dckt. 38, March 22, 2019; Order, Bankr. E.D. Cal. No. 19-23988, Dckt. 46, October 8, 2019. Therefore, pursuant to 11 U.S.C. § 362(c)(4)(A)(I), the provisions of the automatic stay did not go into effect upon Debtor filing the instant case.

Here, Debtor states that the instant case was filed in good faith and explains that the previous cases were dismissed because Debtor could not make the required plan and court payments due to a lack of income, caused by severe medical conditions. Debtor has suffered three heart attacks in the last two years.

**APPLICABLE LAW**

When stay has not gone into effect pursuant to 11 U.S.C. § 362(c)(4), a party in interest may request within 30 days of filing that the stay take effect as to any or all creditors (subject to such

conditions or limitations as the court may impose), after notice and a hearing, only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed. 11 U.S.C. § 362(c)(4)(B).

For purposes of subparagraph (B), a case is presumptively filed not in good faith as to all creditors if:

> (I) 2 or more previous cases under this title in which the individual was a debtor were pending within the 1-year period;
>
> (II) a previous case under this title in which the individual was a debtor was dismissed within the time period stated in this paragraph after the debtor failed to file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney), failed to provide adequate protection as ordered by the court, or failed to perform the terms of a plan confirmed by the court; or
>
> (III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under this title, or any other reason to conclude that the later case will not be concluded, if a case under chapter 7, with a discharge, and if a case under chapter 11 or 13, with a confirmed plan that will be fully performed; . . .

11 U.S.C. § 362(c)(4)(D).

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

A. Why was the previous plan filed?

B. What has changed so that the present plan is likely to succeed?

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

**DISCUSSION**

Debtor's prior cases were dismissed after Debtor failed to file a confirmed plan (No. 2018-26630) and after Debtor failed to timely pay installment(s) fees (No. 2019-23988).

Debtor has had a series of recurring serious medical incidents over the past two year. While

he is undergoing treatments. Declaration, Dckt. 12. Debtor testifies that he should be able to perform the Plan because he is receiving Social Security income of $1,573.60, in addition to his wife's social Security income, and a monthly care fee for a veteran living in Debtor's house.

Going to Schedule I Debtor lists the following income:

Net Business Income.....$3,700.00
Debtor's Social Security.....$1,573.60
Spouse's Social Security.....$1,542.00
SSA Payment for Veteran's Care.....$1,354.60

Total Stated Income.....$8,170.20

No provision in made on Schedule I for payment of any income or self-employment taxes.

An inconsistency exists between Schedule I and Debtor's Profit and Loss Statement for the catering sole proprietorship. On the attached Profit and Loss Statement, which it the projected average for the first six months of the Plan, the information is:

Gross Business Income.....$2,250.00
Materials (food, propane, etc).....($ 750.00)

Total Profit.....$1,500

Dckt. 1 at 32-33.

Debtor states that he has been unable to actively prosecute this business due to the serious health issues and the financial mechanics of how to more than double the profits.

On Schedule A/B Debtor states that he has no interests in any business related assets. Schedule A/B Question 37; Dckt. 1. Debtor further states that he has no interests in any partnerships, corporation, limited liability companies, or other unincorporated businesses. *Id.*, Question 19.

On the Statement of Financial Affairs, Question 27, Debtor lists having one sole proprietorships, which are described as:

Simply Southern Café
Catering - as sole proprietorship,
no employees. Assets are trailer
BBQ grill, commercial refrigerator
at house.

These assets are not listed on Schedule A/B, unless they are included as in the household kitchen items of with a stated value of $300.

Women Over 40 Praise Works LLC
Health and Wellness Services (run
by wife) - mostly a hobby,

expenses usually exceed income

No interest in such limited liability company is listed on Schedule A/B.

Moving to expenses on Schedule J, Debtor does not provide information for his household of three persons, though using all of the income for the other two household members on Schedule I. Dckt. 1 at 34.

For this household of three persons, Debtor lists expenses of only ($,2,329). *Id.* at 35. Debtor states having $5,841 of monthly net income that could be used for a plan.

There are several missing expenses - most significantly self-employment tax and income taxes. Debtor projects having $42,000 on net income from his business, and $37,380 in Social Security income - for $79,380 in annual income for Debtor and his wife. This presumes that Debtor is not receiving income for the veteran's housing. This is without the "rental income" for the boarder.

Looking at the most recent of Debtor's dismissed bankruptcy cases, on Schedule I Debtor listed having $5,836, which consisted of $3,703 in profit from the catering business, $2,133 in Social Security received by Debtor's Spouse (which is greater than the amount stated on Schedule in the current case). 19-23988; Schedule I, Dckt. 1 at 29-30. Debtor states that he anticipates an additional $2,203 in "rental income," which is computed as Debtor receiving $1,725 VA payment and $1,178 payment from Social Security (presumably the veteran's benefit), and having only ($700) in expenses. It is unclear if Debtor were taking all of the Social Security and Veterans' benefits what the veteran would be use for his/her personal expenses, as ($700) is clearly not sufficient.

**Prior Chapter 13 Cases**

Debtor has been filed and unsuccessfully prosecuting Chapter 13 cases since September 10, 2012. These prior cases are:

a. Chapter 13 Case No. 12-32210 - Represented by Experienced Counsel

i. Filed.....June 29, 2012
ii. Dismissed.....September 12, 2012

iii. No Chapter 13 Plan Confirmed

iv. Income on Schedule I; 12-32210, Dckt. 1; stated to be $3,900, consisting of

(1) Debtor's Unemployment.....$1,900

(2) Family Assistance.....$2,000

v. On Schedule B, no businesses are listed as assets. *Id.* On the Statement of Financial Affairs Debtor lists having a business, Simply Southern, with that business ending February 2012. *Id.* at 34.

vi. The case was dismissed for Debtor's failure to prosecute confirmation of a Chapter 13 Plan and failure to make plan payments. 12-32110; Civil Minutes, Dckt. 23.

vii. The Chapter 13 Trustee's Final Report states that Debtor made no plan payments in this first Chapter 13 case. *Id.*; Dckt. 26.

b. Chapter 13 Case No. 12-36400 - Represented by Same Experienced Counsel as in Case No. 12-32210.

i. Filed.....September 10, 2012
ii. Dismissed.....March 1, 2013

iii. No Chapter 13 Plan Confirmed

iv. Income on Schedule I;12-36400, Dckt. 1; stated to be $3,900, consisting of

(1) Debtor's Unemployment.....$1,900

(2) Family Assistance.....$2,000

v. On Schedule B, no businesses are listed as assets. *Id.* On the Statement of Financial Affairs Debtor lists having a business, Simply Southern, with that business ending February 2012. *Id.* at 35.

vi. Dismissal of the case was based on Debtor being delinquent $8,400 in plan payments (when the motion to dismiss was filed) and Debtor's failure to file an amended plan and motion to confirm a modified plan in the three months following the court denying confirmation of the original plan in that case. 12-36400; Civil Minutes, Dckt. 38.

vii. The Trustee's Report states that Debtor made no plan payments in this second Chapter 13 case. *Id.*; Dckt. 43.

c. Third Chapter 13 Case No. 13-23817 - In Pro Se

i. Filed.....March 22, 2013
ii. Dismissed.....July 3, 2013

iii. No Chapter 13 Plan Confirmed

iv. Income on Schedule I;13-23817, Dckt. 1; stated to be $3,900, consisting of

(1) Debtor's Employment.....$3,900

v. On Schedule B, no businesses are listed as assets. *Id.* On the Statement of

Financial Affairs Debtor lists having a business, Simply Southern, with that business ending February 2012. *Id.* at 26.

vi. This third Chapter 13 case was dismissed due to Debtor failing to make any plan payments, failure to provide tax records, failure of Debtor to disclose spouse's income information (Schedule I stating that spouse was a homemaker with $0.00 income, which spouse had income from employment of $1,700 a month), and Debtor failed to provide payroll advices. 13-23871; Motion and Civil Minutes, Dckts. 18, 37.

vii. The Trustee Final Report states that Debtor made no plan payments. *Id.*; Dckt. 44.

During the twelve months of these first three Chapter 13 cases, Debtor made no plan payments.

Following the July 2013 dismissal of the third Chapter 13 case, five years passed before Debtor commenced his next Chapter 13 case.

d. Fourth Chapter 13 Case No. 18-26630 - Represented by New Experienced Counsel

i. Filed.....October 22, 2018
ii. Dismissed.....June 22, 2019

iii. No Chapter 13 Plan confirmed

iv. Income on Schedule I;18-26630, Dckt. 1; stated to be $4,398.67, consisting of

(1) Debtor's Business Income.....$ 750

(2) Debtor's Unemployment.....$1,347.67

(3) Spouse's Unemployment.....$1,950.00

(4) Food Stamps.....$ 351.00

Debtor also states that Debtor will be getting $350-$450 a month for renting "rooms" in home. Further that Debtor expects to be employed at $35 an hour beginning January 1, 2019, and Debtor' wife "just started" receiving $450 a month unemployment. It appears that the spouse's unemployment income of $1,950.00 is overstated.

v. On Schedule B, no businesses are listed as assets. *Id.* On the Statement of Financial Affairs Debtor lists having a business, Simply Southern, that operated from 2008 to 2015. *Id.* at 36. This conflicts with the prior statements under penalty of perjury that Simply Southern was closed down in February 2012 - indicating that it was operating and there was

undisclosed income in the first three bankruptcy cases.

Debtor does not state there being any other business of the Debtor as of completing the Statement of Financial Affairs under penalty of perjury on October 22, 2018.

vi. This fourth Chapter 13 case was dismissed due to Debtor failing to file and prosecute an amended Chapter 13 plan within 60 days of the court denying confirmation of the original plan in the fourth bankruptcy case. *Id.*; Order, Dckt. 38.

vii. The Trustee Final Report states that Debtor made no plan payments. *Id.*; Dckt. 41.

e. Fifth Chapter 13 Case No. 19-23988 - Represented by Same Experienced Counsel as in Fourth Chapter 13 case.

i. Filed.....June 24, 2019
ii. Dismissed.....October 8 2019

iii. No Chapter 13 Plan confirmed

iv. Income on Schedule I;19-23988, Dckt. 1; stated to be $5,836.00, consisting of

(1) Debtor's Business Income.....$ 3,703

For employment, Debtor states that he was, as of signing the Statement of Financial Affairs, and for the prior 10 years been employed by Simply Southern Café. *Id.* at 29. This is in direct conflict to what Debtor stated under penalty of perjury on the prior Schedules and Statements of Financial Affairs.

Attached to Schedule I is a Profit & Loss Statement for Debtor's business. It states that the projected monthly gross income is $2,250 a month, with expenses of ($750), for a projected actual net income of $1,500 a month - with in ($2,203) less than stated on Schedule I. *Id.* at 31.

(2) Spouse's Social Security.....$2,133.00

Debtor also states that Debtor will be getting $2,203 a month for renting room and expenses in home to a disabled veteran ($1,725 veterans' payment and $1,178 Social Security, less $700 in expenses) in home.

v. On Schedule B, no businesses are listed as assets. *Id.* On the Statement of Financial Affairs Debtor lists having a business, Simply Southern, that operated from 2008 to 2015. *Id.* at 41. This conflicts with the prior statements under penalty of perjury that Simply Southern was closed down in February 2012 - indicating that it was operating and there was undisclosed income in the first three bankruptcy cases. Now he also lists Simply Southern Case, a sole proprietorship , that Debtor has operated

since 2015. *Id.*

Debtor does not state there being any other business of the Debtor as of completing the Statement of Financial Affairs under penalty of perjury on October 22, 2018.

vi. This fifth Chapter 13 case was dismissed due to Debtor failing to file and prosecute an amended Chapter 13 plan, failure to make plan payments, and failure to provide the required documents to the Chapter 13 Trustee. *Id.*; Order, Civil Minutes, Dckt. 34.

vii. The Trustee Final Report states that Debtor made no plan payments. *Id.*; Dckt. 49.

The main creditor that is the subject of the Chapter 13 Plan filed in this case is NewRez, with a claim secured by Debtor's residence. The arrearage on this claim to be cured in Class 1 is stated to be ($36,000). Dckt. 3.

In the fifth Chapter 13 case, the plan listed Ocwen Loan Servicing as having the claim secured by Debtor's residence, with an arrearage of ($36,000). 19-23998; Plan, Dckt. 3. No proofs of claim were filed in the fifth Chapter 13 case. Proof of Claim No. 5 filed in this case appears to be this secured claim. U.S. Bank, N.A. is identified as the creditor, with the amount of the secured claim stated to be ($784,235.07), and the pre-petition arrearage as being ($44,825.01).

On Schedule A in the current case Debtor lists the residence property, Caliente Ct, as having a value of $600,000. Dckt 1 at 13. On Schedule D, Debtor lists the following claims being secured by the residence property:

California Franchise Tax Board.....($ 8,700)
NewRez.....($790,304) [FN. 1]

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FN. 1. It is stated that there is a "Deferred Principal" of ($427,022.72) on this secured claim.

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These filings raise some serious questions. Debtor has had a "spotty" record of providing accurate information under penalty of perjury. Debtor's own projected profit and loss statement shows that Debtor does not have the monies to fund the Plan. Debtor's "plan" is to pour money into a property that has a significant negative equity at a time that property values are at an all-time high.

**Discussion of Financial Information at the Hearing**

At the hearing, the court questioned Debtor's counsel about why there is no provision in the expenses for payment of income and self-employment taxes. No good explanation was offered by Debtor's counsel. It was asserted that since in the past the Debtor did not make the money that he states he will be making going forward, there was no historic tax information to use.

Such excuse is not a basis for not accurately stating the projected taxes for the projected

income upon which Debtor basis his plan. Neither Debtor nor counsel could in good faith submit the Schedules I and J purporting to "accurately" state Debtors actual income and Debtor's actual expenses, but leave off the required income and self-employment taxes. Debtor and counsel want the court to "believe" what is "unbelievable" financial information.

Additional concerning information was presented. A substantial part of Debtor's "new income" is for taking in a disable veteran as a boarder. Debtor's counsel represented to the court that the boarder is not a family member, but a third-party for whom Debtor is being paid to provide boarding and care.

On Schedule I, Debtor states that he is being paid $3,554.60 a month for providing board and care for the disabled veteran. This money received is identified as being from the following sources:

$ 2,200.00..... The Disabled Veteran VA Benefits
$ 1,354.60..... The Disabled Veteran's Social Security Benefits

Dckt. 1 at 32.

At the hearing, Debtor's counsel stated that for this $3,554.60 a month, Debtor is providing significant board and care, though counsel was not able to describe what that is.

Looking a Schedule J, in addition to not showing the payment of any self-employment or income taxes, it does not appear that there are expenses for providing the board and care services for the disabled veteran. This causes concern about the "care" being given the disabled veteran.

The court grants the Motion on an interim basis. Debtor's counsel reports that the foreclosure sale was scheduled for December 30, 2019, but he does not know if that occurred. He has not checked to see it has occurred by contacting the foreclosure trustee or checking the foreclosure trustee's website.

It is stated that even though there is no equity in the home, due to the special loan modification terms with a decreasing balloon payment, the Debtor desires to stay in this home.

The court grants the motion on an interim basis. If the foreclosure sale was not conducted, that may indicate the creditor recognizing this being a special loan modification case. If it has occurred, that will be brought to the court's attention (presumably) swiftly by the foreclosing creditor or buyer.

**JANUARY 28, 2020 HEARING**

Nothing further has been filed in support or in opposition to the Motion. At the hearing, XXXXXXXXXX

~~The motion is granted and the 11 U.S.C. § 362 stay is imposed for all persons and purposes until terminated by operation of law or further order of the court.~~

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

The Motion to Impose the Automatic Stay ("Motion") filed by Michael Roy Mullins ("Debtor") having been presented to the court; Findings of Fact and Conclusions of Law being stated in the Civil Minutes for the hearing; upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted and the automatic stay is imposed, and continues in full force and effect as provided in the prior Interim Order (Dckt. 20), pursuant to 11 U.S.C. § 362(c)(4)(B) for all purposes and parties on an interim basis for the period through and including noon on February 14, 2020, unless terminated by operation of law or further order of this court.

**16. 19-26029-E-13 PGM-1 16 thru 18** | **DEBRA THOMPSON** **Peter Macaluso** | **MOTION TO CONFIRM PLAN** **12-13-19 [41]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 13, 2019. By the court's calculation, 46 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

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

The debtor, Debra LaChele Thompson ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for 58 monthly payments of $1,065.00 commencing December 25, 2019, with a 0.00% percent dividend to unsecured claims totaling $110,111.99. Amended Plan, Dckt. 45. 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 January 14, 2020. Dckt. 72.

**DEBTOR'S REPLY**

Debtor filed an Opposition on January 19, 2020. Dckt. 83. Debtor responds that she will be current on plan payments on or before the hearing and that Debtor has provided Trustee with copies of Debtor's 2018 Tax Returns and 60 days pre-petition income statement via email on January 19, 2020.

**OPPOSITION OF WESTLAKE FINANCIAL SERVICES**
**BY ITS AGENT, PERITUS PORTFOLIO SERVICES II, LLC**

Peritus Portfolio Services II, LLC, as the agent for its principal Westlake Financial Services ("Creditor Westlake") holding a secured claim, has filed a pleading titled "Objection to Confirmation of Debtor's Chapter13 Plan" on January 14, 2020. Dckt. 78. The filing of such "Objection" is not proper as the Debtor has filed and a Motion to Confirm an Amended Chapter 13 Plan. Under the Local Bankruptcy Rules, an "Objection to Confirmation" is properly filed only as to the first Chapter 13 plan filed by a debtor if such plan is timely filed that it could be confirmed without a hearing if nobody objects.

Creditor Westlake then used the Docket Control Number for its pending motion for relief from the stay, so it does not appear on the docket in connection with the Motion to Confirm.

The filing of the "Objection" was timely for filing an "Opposition" to the Motion to Confirm. The court construes the "Objection" as an opposition to the Motion to Confirm and does not enter Creditor Westlake's default in the Motion to Confirm Contested Matter.

Creditor Westlake opposes confirmation of the Chapter 13 Plan on the basis that:

A. Debtor is delinquent in plan payments.

B. Debtor's Plan calls for adjusting the interest rate on Creditor Westlake's loan.

C. Debtor's bankruptcy case and Plan were filed in bad faith.

**Delinquency**

Creditor Westlake restates what has already been addressed by Trustee (Dckt. 75) and discusses Debtor's delinquency in plan payments. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

**Interest Rate**

Creditor Westlake objects to the confirmation of the Plan on the basis that the Plan calls for adjusting the interest rate on its loan with Debtor to 6.00%. Creditor Westlake's claim is secured by a 2010 Mercedes Benz C350, VIN # ending in 8500. Creditor Westlake argues that this interest rate is outside the limits authorized by the Supreme Court in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). In *Till*, a plurality of the Court supported the "formula approach" for fixing post-petition interest rates. *Id.* Courts in this district have interpreted *Till* to require the use of the formula approach. *See In re Cachu*, 321 B.R. 716 (Bankr. E.D. Cal. 2005); *see also Bank of Montreal v. Official Comm. of Unsecured Creditors (In re American Homepatient, Inc.)*, 420 F.3d 559, 566 (6th Cir. 2005) (*Till* treated as a decision of the Court). Even before *Till*, the Ninth Circuit had a preference for the formula approach. *See Cachu*, 321 B.R. at 719 (citing *In re Fowler*, 903 F.2d 694 (9th Cir. 1990)).

Creditor Westlake lists the following risk factors to be evaluated for the upward adjustment of interest:

1. Debtor took out the loan less than two (2) months before filing the present bankruptcy;

2. Debtor made no payments on the loan and failed to include the claim in her initial plan; and

3. The Vehicle is a rapidly depreciating asset.

Moving through these objections, the court first begins with Creditor Westlake's assertion that a used 2010 Mercedes Benz C350 purchased in 2019 is such an undesirable, unreliable, prone to immediate manifestations of manufacture defects vehicle that it is a rapidly depreciating ten-plus model year old vehicle. This appears to put this vehicle and manufacturer outside the norm for depreciation of other vehicles, and an admission by Creditor Westlake that its collateral is of questionable value.

The grounds stated with particularity and evidence presented for this assertion (made subject to the Fed. R. Bankr. P. 9011 certifications) is – **None Provided**.

Creditor Westlake has not provided the court with expert testimony why a ten model year old vehicle is "rapidly depreciating." It is commonly known that a new vehicle will suffer from accelerated depreciation during the first three years of ownership, but that such "rapid depreciation" does not occur thereafter.

Reviewing the Exhibits (Dckt. 81), the court notes that Creditor Westlake has not included an analysis using Kelly Blue Book or NADA valuation tables showing this "rapid depreciation."

Such contention of "rapid depreciation" appears to be made out of hole cloth, a fabrication by Creditor Westlake, Peritus Portfolio Services II, LLC, and counsel for Creditor Westlake and Peritus Portfolio Services II, LLC.

This puts in serious question and doubt the other grounds stated by Creditor Westlake.

Reasonable, Good Faith Interest Rate

Creditor Westlake's counsel pounds the table and asserts that based on the application of *Till* the proper good faith, commercially reasonable, necessary interest rate should be the 27.99% in the contract that the seller and Creditor Westlake provided the financing for Debtor's purchase of the ten-plus model year old, rapidly depreciating vehicle.

Creditor Westlake provides (an almost illegible) copy of the contract on which it asserts a claim as an exhibit to the "Objection." Exhibit 1, Dckt. 81. In the 21st Century it seems almost unbelievable that a sophisticated creditor does not have clear, legible copies of documents it generated in the last year of the 20th Century.

Some of the most illegible information on Creditor Westlake's contract are the dates. From what the court can make out, Creditor Westlake was the original lender in making this loan, with the contract date and the "assignment" to Creditor Westlake being the same day. Clearly, Creditor Westlake necessarily had the time to do its due diligence in vetting the Debtor as a borrower to make this loan, and not merely purchasing a years old car loan that was one of thousands in a sub-prime car loan portfolio

traded between debt buyers.

For a consumer to sign a contract with a 27.99% interest rate, it would appear that such a consumer is the poster child for the "least sophisticated consumer" standard used in many federal and state consumer protection statutes. Having such an interest rate, and intentionally making a loan with such a large interest rate to the poster child for what is the least sophisticated consumer, such could well be deemed an admission by the seller and lender that they knew such a least sophisticated consumer would file bankruptcy and the interest rate would be revised under a Chapter 13 Plan to something between 4.5% to 6.5% in the current market.

In looking at the evidence presented by Creditor Westlake, the court notes that Creditor Westlake has opted to not provide the court with any evidence of the current interest rate – even though Creditor Westlake demands that the court compute the interest rate under the *Till* standard.

The failure to provide this necessary evidence has imposed on the court the extreme burden of having to do an internet search to find a current prime rate. Going to the Federal Reserve Bank website and clicking the link for the daily H.15 interest rate report, the current bank prime loan rate is stated to be 4.75%. [FN. 1] Thus, the proposed interest rate does not appear to be outrageous, unreasonable, or contra to established law. Rather, it may actually be a bit high given the age of this ten model year old used vehicle.

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FN. 1. https://www.federalreserve.gov/releases/h15/.

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**Good Faith**

Creditor Westlake asserts that the current bankruptcy and Plan were filed in bad faith and in violation of 11 U.S.C. § 1325(a). Pursuant to section 1325(a)(3), to be entitled to confirmation, the chapter 13 plan must have been proposed in good faith and may not have been proposed by any means forbidden by law. Also, under section 1325(a)(7) a plan can be denied confirmation if the action of the debtor in filing the bankruptcy petition was not in good faith.

For this, Creditor Westlake directs the court to this being Debtor's fourth bankruptcy case in two (2) years. Creditor Westlake argues that the last three bankruptcies (which as shown above were pending in just one year) has been an effort by the Debtor to stall Creditor Westlake.

Creditor Westlake also asserts that loan's origination and the proximity of the bankruptcy shows that Debtor is not acting in good faith. Debtor took out the loan less than two months before filing the current bankruptcy. Despite this, she failed to include the claim in her prior plan. In addition, Debtor has failed to make any payments on the loan.

On this point, Creditor Westlake causes the court to pause, as one wonders how someone, struggling through three prior bankruptcy, decides to purchase a new car and sign, in good faith, an agreement to repay a loan according to the terms of the agreement, and then immediately dump it into bankruptcy.

While such would normally be a relatively easy question to answer, here Creditor Westlake has presented the court with a "kettle calling the pot black" situation. Creditor Westlake knowingly

made this loan having extracted from this clearly least sophisticated consumer an unreasonable interest rate of 27.99%. Creditor Westlake had to know that a least sophisticated consumer who would sign such a commercially unreasonable (some would say predatory) interest rate contract would be filing bankruptcy. Presumably, Creditor Westlake did its due diligence and pulled the Debtor's credit report before buying the 27.99% interest rate contract and saw that Debtor was struggling though multiple unsuccessful bankruptcy cases.

The court concludes that, as to Creditor Westlake, the filing is not in bad faith. Creditor Westlake could and should have reasonably expected that a bankruptcy case would be forthcoming. Presumably, Creditor Westlake knew of the prior bankruptcy cases and Debtor's struggle. Creditor Westlake has chosen not to provide the court with any evidence of its due diligence and its reasonable belief that it would be paid the 27.99% interest under the contract, unimpeded by bankruptcy.

**DISCUSSION**

**Delinquency**

The Chapter 13 Trustee asserts that Debtor is $1,065.00 delinquent in plan payments, which represents one month of the $1,065.00 plan payment. Before the hearing, another plan payment will be due. According to the Chapter 13 Trustee, the Plan in § 2.01 calls for payments to be received by the Chapter 13 Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

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, Debra LaChele Thompson ("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.

**17.** **19-26029-E-13** **DEBRA THOMPSON** **CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION**
**RDW-1** **Peter Macaluso** **12-2-19 [31]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13Trustee, parties requesting special notice, and Office of the United States Trustee on December 2, 2019. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

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

**The Motion for Relief from the Automatic Stay is xxxxx.**

Peritus Portfolio Services II, LLC as agent for Westlake Financial Services, its assignees and/or successors ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2010 Mercedes-Benz C350, VIN ending in 8500 ("Vehicle"). The moving party has provided the Declaration of Nyman Codere to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Debra LaChele Thompson ("Debtor").

Movant argues Debtor has not made one (1) post-petition payments, with a total of $610.73 in post-petition payments past due. Declaration, Dckt. 34. Movant also provides evidence that there are one (1) pre-petition payments in default, with a pre-petition arrearage of $610.73. *Id.*

Movant has also 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).

**DISCUSSION**

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be $20,397.35 (Declaration, Dckt. 34), while the value of the Vehicle is determined to be $12,038.00, using the NADA report provided by Movant.

This bankruptcy case was filed on September 26, 2019. Though largely illegible, a copy of the Retail Installment Contract by which Debtor purchased this vehicle is attached as Exhibit 3 (Dckt. 35) filed in support of the Motion. The date on the Contract is August 2019, stating that the first payment for this Mercedes Benz is due in September 2019. Exhibit 3, Dckt. 35 at 8. It also states that Debtor made a cash down payment of $1,1xx.00 (partially legible). *Id.*

Debtor is listed as the buyer of the Vehicle.

On October 15, 2019, Debtor filed her Schedules in this case. On Schedule A/B Debtor states under penalty of perjury that the only vehicle she owns or has an interest in is a 2014 Lexus. Schedule A/B, Question 3; Dckt. 16 at 3. On Schedule D Debtor states that the only obligation secured by a vehicle is that secured by the 2014 Lexus. *Id.* at 11-12.

On Schedule J Debtor states that she does not have any dependants. *Id.* at 29. On the Statement of Financial Affairs, Part 1, Debtor states that she is not married. *Id.* at 32. In response to Question 10 on the Statement of Financial Affairs Debtor states that a 2014 Lexus was repossessed on September 28, 2018. *Id.* at 34. This appears to be the same Lexus as Debtor states under penalty of perjury on Schedule A/B that she owned as of the commencement of this case.

Movant directs the court to Debtor's prior Chapter 13 case, No. 18-22324, that was dismissed September 13, 2018, a year before the current case was filed. Additionally, Chapter 13 case No. 18-26605, which was filed October 19, 2018 and dismissed on May 23, 2019, four months before this case was filed.

In reviewing the court's files, there is another Chapter 13 case filed by Debtor, No 19-251176. It was filed on August 16, 2019 and dismissed on September 6, 2019.

Thus, in the one year period preceding the commencement of the current bankruptcy case on September 26, 2019, there had been pending and dismissed the prior bankruptcy cases of Debtor:

Chapter 13 Case No. 19-25176

Filed.....August 16, 2019

Dismissed.....September 6, 2019

Chapter 13 Case No. 18-26605

Filed.....October 19, 2018

Dismissed.....May 23, 2019

The Debtor having two prior bankruptcy cases that were pending and dismissed brings into play the provisions of 11 U.S.C. § 362(c)(4)(A) which states:

> (4)(A)(i) if a single or joint case is filed by or against a debtor who is an individual under this title, and if 2 or more single or joint cases of the debtor were pending within the previous year but were dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b), the stay under subsection (a) shall not go into effect upon the filing of the later case; and
>
> > (ii) on request of a party in interest, the court shall promptly enter an order confirming that no stay is in effect;

There being two prior cases that were pending against this individual debtor that were dismissed within the one year period preceding the commencement of this case, no automatic stay has gone into effect in this case. There being no stay in effect, there is no relief to be granted pursuant to 11 U.S.C. § 362(d).

The Debtor has not sought the imposition of a stay in this third bankruptcy case as provided under 11 U.S.C. § 362(c)(4)(B).

**Other Relief Requested For Which No Basis Shown For Granting**

Relief Pursuant to 11 U.S.C. § 109(g)

The Motion states that relief from the automatic stay is sought pursuant to 11 U.S.C. § 109(g). Motion, p. 2:8-9; Dckt. 31. 11 U.S.C. § 109(g) is not a "relief from stay provision," but is an eligibility to file bankruptcy provision enacted by Congress, which states:

> (g) Notwithstanding any other provision of this section, no individual or family farmer may be a debtor under this title who has been a debtor in a case pending under this title at any time in the preceding 180 days if--
>
> > (1) the case was dismissed by the court for willful failure of the debtor to abide by orders of the court, or to appear before the court in proper prosecution of the case; or
> >
> > (2) the debtor requested and obtained the voluntary dismissal of the case following the filing of a request for relief from the automatic stay provided by section 362 of this title.

There is no language in this section about granting relief from the automatic stay. It does provide that an individual is not eligible to file a bankruptcy case for 180 days after the dismissal of a prior case if: (1) that dismissal was voluntary and (2) that the voluntary dismissal was made after a motion for relief from the stay was filed.

Mandatory Injunction

The motion then seeks additional relief, stating that Movant is seeking "an order requiring that Debtor cooperates and turns over the Vehicle to [Movant], or make the Vehicle available to [Movant] for repossession and return." This request for an order requiring the Debtor to undertake a specific act is a mandatory injunction. The Supreme Court has provided in Federal Rule of Bankruptcy Procedure 7001 that injunctive relief must be requested through an adversary proceeding, not merely as a tag on to a motion for relief from the stay.

**JANUARY 28, 2020 CONTINUED HEARING**

Since the prior hearing, the court has granted two motions filed by the Debtor to value secured claims. Orders, Dckts. 87, 88.

On December 13, 2019, Debtor filed a Motion to Confirm the Amended Chapter 13 Plan. Motion, Dckt. 45. That Motion is set for hearing on the court's January 28, 2020 calendar.

**18.** **19-26029-E-13 RDW-1** **DEBRA THOMPSON** **Peter Macaluso** **OBJECTION TO CONFIRMATION OF PLAN BY PERITUS PORTFOLIO SERVICES II, LLC** **1-14-20 [78]**

**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, parties requesting special notice, and Office of the United States Trustee on January 14, 2020. By the court's calculation, 14 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 considered as an opposition to the pending of a Motion to Confirm Amended Plan (DCN: PGM-1, Dckt. 41) that was filed on December 13, 2020.**

**19.** **14-22789-E-13 SLE-2** | **DAVID COTA AND KAREN SLAVICH-COTA** **Steele Lanphier** | **CONTINUED MOTION TO WAIVE SECTION 1328 CERTIFICATE REQUIREMENT, AS TO DEBTOR AND/OR MOTION FOR ENTRY OF DISCHARGE** **8-22-19 [107]**

**Tentative Ruling:** The Motion to Waive Section 1328 Certification has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

**Below is the court's tentative ruling.**

**----------**

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on August 22, 2019. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

The Motion for Entry of Discharge 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 for Entry of Discharge is xxxxx.**

The present Motion filed by the debtors, David Brian Cota ("Debtor David") and Karen Louise Slavich-Cota ("Debtor Karen") (collectively "Debtor") seeks two forms of relief.

The primary relief sought is a Motion for Entry of Discharge. With some exceptions, 11 U.S.C. § 1328 permits the discharge of debts provided for in a plan or disallowed under 11 U.S.C. § 502 after the completion of plan payments.

The Chapter 13 Trustee, David Cusick's ("Trustee") final report was filed on May 14, 2019, and no objection was filed within the specified thirty-day period. *See* FED. R. BANKR. P. 5009. The order approving final report and discharging the Chapter 13 Trustee was entered on June 19, 2019. Dckt. 100. The entry of an order approving the final report is evidence that the estate has been fully administered. *See In re Avery*, 272 B.R. 718, 729 (Bankr. E.D. Cal. 2002).

**11 U.S.C. § 1328 Statements**

Debtor Karen's filed a 11 U.S.C. § 1328 Certificate which states she:

A. has completed the plan payments;

B. does not have any delinquent domestic support obligations;

C. has completed a financial management course and filed the certificate with the court;

D. has not received a discharge in a case under Chapter 7, 11, or 12 during the four-year period prior to filing of this case or a discharge under a Chapter 13 case during the two-year period prior to filing of this case;

E. is not subject to the provisions of 11 U.S.C. § 522(q)(1); and

F. is not a party to a pending proceeding which implicates 11 U.S.C. § 522(q)(1).

Debtor David is reported to have passed away in 2017.

The second request for relief is to waive the requirement that he complete 11 U.S.C. § 1328 certifications, so that the discharge may be entered.

**TRUSTEE'S NOVEMBER 8, 2019 RESPONSE**

On November 8, 2019, Trustee filed a Response to the Motion to Waive Requirement of Filing Certification Pursuant to 11 U.S.C. § 1328 and Motion to Enter Discharge. Trustee asserts that the Motion does not provide information regarding any life insurance that may have been received due to the death of Debtor David Brian Cota. A policy with a face amount of $100,000.00 but no cash value was listed on Schedule B and C. If the policy was maintained, the surviving Debtor may have received the $100,000.00. If it was received, the proceeds should have been disclosed so that actions could be taken to address it.

Trustee would also like the court to consider that the surviving debtor failed to explain how she was able to continue the plan payments for at least 18 months without the deceased debtor's income after his passing. Lastly, an amount of $200.00 is listed as a contribution by the son-in-law. The amount of $2,772.08 is listed as pension or retirement income for the surviving spouse.

**DISCUSSION**

On August 22, 2019, it was first reported to the court that Debtor David passed away on September 24, 2017. A copy of the Certificate of Death is filed as Exhibit A. Dckt. 110. This is reported to the court seven hundred and thirty-eight (738) days after the death.

Ostensibly, Debtor Karen and her counsel withheld the news of Debtor David's death from this court - electing to secretly proceed in the prosecution of this case without one of the Debtors properly a party before this court.

Having held this information, the surviving Debtor and counsel precluded the court from making the necessary decisions and determinations as to whether the case could be prosecuted. The Federal Rules of Bankruptcy Procedure are not ambiguous and clearly provide that the court prospectively must make a determination that the case may proceed in the event of the death of a debtor:

> Death or incompetency of the debtor shall not abate a liquidation case under chapter 7 of the Code. In such event the estate shall be administered and the case concluded in the same manner, so far as possible, as though the death or incompetency had not occurred. **If a** reorganization, family farmer's debt adjustment, or **individual's debt adjustment case is pending under** chapter 11, chapter 12, or **chapter 13**, **the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed** and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred.

FED. R. BANKR. P. 1016(emphasis added).

Debtor's confirmed Chapter 13 Plan requires very substantial monthly payments of $4,375.00 per month to be made to fund the Plan. Second Amended Chapter 13 Plan, § 6.01; Dckt. 60. On Amended Schedule I Debtor listed having a combined monthly income (after very modest tax withholding of only $1,088 a month) of $8,658. Dckt. 68 at 3-4.

From this Debtor had month expenses for the two debtors and four dependants - two grandchildren, an adult daughter, and an adult son. Amended Schedule J, *Id.* at 5-6. Though a family of six persons, Debtor stated that monthly expenses (exclusive of mortgage, property taxes, and property insurance payments) of ($4,450.24). This left the Debtor with the monthly net income of $4,208.43, which was slightly less than the required Plan payments.

Of this, $2,780.67 was the deceased debtor's income. Additionally, there was a "contribution" of a son-in-law of $2,772.08. Amended Schedule I, *Id.* at 4. It is not clear if the son-in-law "contributing" is the husband and parent of the daughter and two grandchildren which Debtor stated under penalty of perjury were dependants.

Debtor Karen and her counsel have usurped the court's role here, deciding two years ago not to report Debtor David's passing, and to just continue administration of the case like nothing happened.

If Debtor Karen and counsel had proceeded correctly in the past, the present request for waiver of the 11 U.S.C. § 1328 certifications would not be necessary. When a debtor passes away, but

where further administration is possible and in the parties' best interest, then a personal representative may be appointed to resume the case. No representative, whom could easily make the 11 U.S.C. § 1328 certifications, was appointed here.

Here, the case has been completely administered, and all payments have been made. On their petition, no claims for domestic support or claims related to the provisions of 11 U.S.C. § 522(q)(1) were listed, and no claim was filed by any creditor asserting the same. Debtor David Brian Cota has not received a prior discharge, and was able to complete the financial management course before his passing.

No basis for retroactive appointment of a personal representative and for determination that two years ago the Chapter 13 case for the deceased debtor should proceed has been presented. Though the Debtor and her counsel determined two years ago that the case should continue to be administered, the death of the deceased debtor was withheld from the court and no determination was made that the case could and should continue as to the deceased debtor.

At the hearing the Debtor's counsel requested a continuance to try and address the issues. Debtor's counsel first stated that there was no $100,000 in life insurance, but then recanted, saying he really didn't know. In addition to Debtor providing information about the insurance, the Chapter 13 Trustee will independently initiate discovery directly with insurance company.

Counsel also offered that the attorney in his office who was previously handling this matter no longer is and that said attorney has been disciplined by the State Bar for not attending to cases for that office, and that Debtor's current counsel is addressing the issue with the State Bar concerning his supervision of that attorney.

**JANUARY 28, 2020 CONTINUED HEARING**

Nothing further has been filed since the November 28, 2019 prior hearing on this Motion. No motion to substitute a personal representative for the deceased debtor. No information has been provided concerning the $100,000 life insurance policy listed on Schedule B under penalty of perjury. Amended Schedule B, Dckt. 53.

It appears that current counsel for the surviving debtor has "inherited" this file from a former attorney (who is no longer authorized to practice law by the State Bar). The surviving debtor, Karen Slavich-Cota, appears to have some level of sophistication above that of the average consumer debtor, with her employment listed as "Executive Secretary, DMV - Legal Affairs Division."

At the hearing, **xxxxxxxxxx**

# FINAL RULINGS

| | | | |
|---|---|---|---|
| **20.** | **18-23227-E-13 PSB-3** | **KIMBERLI HECK AND DAVID HECK, JR.**<br>**Paul Bains** | **MOTION TO MODIFY PLAN**<br>**12-17-19 [82]** |

**Final Ruling:** No appearance at the January 28, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 17, 2019. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

**The Motion to Confirm the Modified Plan is granted.**

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtors, Kimberli Beth Heck and David Keith Heck, Jr. ("Debtor"), have filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response indicating non-opposition on January 7, 2020. Dckt. 91. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

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

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

**IT IS ORDERED** that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on December 17, 2019, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

**21.** **15-22829-E-13 MJD-1** **DANIEL/MALIA PALU** **Scott Sagaria** **STATUS CONFERENCE RE: MOTION TO SUBSTITUTE ATTORNEY** **12-29-19 [71]**

**Final Ruling: No appearance at the January 28, 2020 Status Conference is required.**

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Debtor's Atty: Scott J. Sagaria; Kyle W. Schumacher; Matthew J. DeCaminada

Notes:
Set by order of the court for consideration of whether the case should be dismissed; Malia Palu, Matthew DeCamindada; Kyle W. Schumacher to appear in person. No Telephonic Appearances Permitted

[KWS-3] *Ex Parte* Motion to Appear Telephonically in the Hearing on Substitution of Attorney and Status Conference filed 1/16/20 [Dckt 81]; Order granting filed 1/16/20 [Dckt 83]

**The Status Conference is concluded and removed from the Calendar.**

On
December 29, 2019, two Substitution of Attorneys were filed in this bankruptcy case. The first, Dckt. 71., identifies an unspecified Debtor as "deceased" and the current counsel of record, Scott Sagaria, as "deceased."

The court has addressed substitutions of counsel in the late Mr. Sagaria's cases, his passing having been previously brought to the attention of the court.

However, it appears that Debtor Daniel Palu is also deceased. Though the Substitution is signed by Debtor Malia Palu, so is the second application, which appears to be the substitution of attorney form for her.

No Notice of Death has been filed and no personal representative has been appointed for him pursuant to Federal Rule of Bankruptcy Procedure 1016 in this case. Kyle Schumacher has previously appeared as counsel of record for Daniel Palu - Application to Incur New Debt, Dckt. 69.

Though the court can authorize the substitution of counsel for Malia Palu, it cannot so do for a deceased person for whom there is no personal representative seeking such.

It appearing that Debtor Daniel Palu is deceased, no appointment of a personal representative as required by the Federal Rules of Bankruptcy Procedure being sought, the surviving Debtor and two licensed attorneys requesting substitution of an attorney for a party they state to the court is deceased; the court set this Status Conference.

**ADDITIONAL PLEADINGS FILED**

On January 3, 2020, Debtor Malia Siaki Palu filed a Notice of Debtor and Motion for Appointment of Representative for the deceased debtor. Dckt. 76.

Counsel for Debtor Malia Siaki Palu filed supplemental pleadings addressing the concerns of the court. Dckt. 84-87.

After the February 13, 2020 hearing on the Motion for Appointment of Representative for the deceased debtor, counsel for the appointed representative can appear.

The Status Conference is concluded and removed from the Calendar.

The court will enter an order not authorizing the requested substitution of counsel for the deceased debtor so that the court's file documents how that substitution is being addressed.

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 Substitution of Counsel for deceased debtor Daniel Palu and surviving co-debtor Malia Siaki Palu having been considered by the court, the court authorizing the substitution of counsel for co-debtor Malia Siaki Palu having been entered (Dckt. 74), there being a hearing pending for the appointment of a personal representative for deceased debtor Daniel Palu, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the court denies without prejudice the substitution of counsel for the deceased debtor Daniel Palu, with the identification of counsel for the successor representative to be made after the appointment of such representative.

**22.** **19-20429-E-13** **TANYA HALL** **DISCOVERY STATUS CONFERENCE**
**TJW-2** **Timothy Walsh** **RE: MOTION TO VALUE COLLATERAL OF REAL TIME RESOLUTIONS INC**

**DISMISSED 1/17/20** **10-2-19 [57]**

**Final Ruling: No appearance at the January 28, 2020 Hearing is required.**

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Debtor's Atty: Timothy J. Walsh

Notes:
Set by court order dated 12/27/19 [Dckt 91]. Parties to file and serve on or before 1/21/20 a short, not more than two pages in length, Discovery Status Conference Report.

[DPC-3] Order dismissing case filed 1/17/20 [Dckt 95]

**The Discovery Conference is concluded and the Motion is Denied without prejudice,** the bankruptcy case having been previously dismissed.

**The bankruptcy case having been previously dismissed, the Motion to Value is moot and 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 filed by Debtor having been presented to the court, and upon review of the pleadings, the Bankruptcy Case having been dismissed, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Value is denied without prejudice, having been rendered moot by the dismissal of this case.

**23.** **19-21344-E-13** **ANNE FORD** **MOTION TO MODIFY PLAN**
**BLG-3** **Chad Johnson** **11-7-19 [59]**

**Final Ruling:** No appearance at the January 28, 2020 hearing is required.
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, Chapter 13 Trustee, creditors, and parties requesting special notice and Office of the United States Trustee on November 07, 2019. By the court's calculation, 62 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

**The Motion to Confirm the Modified Plan is granted.**

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Anne Klein Ford ("Debtor"), has filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response indicating non-opposition on January 7, 2020. Dckt. 71. According to Trustee, he has received $53,010.98 in escrow proceeds from the sale of the debtor's residence pursuant to Debtor's Motion to Sell (Dckt.49). The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

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

**IT IS ORDERED** that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on November 7, 2019, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

**24. 19-20047-E-13 BLG-3 — JULIUS/CHRISTINA JARVIS — Chad Johnson — MOTION TO CONFIRM PLAN — 12-10-19 [65]**

**Final Ruling:** No appearance at the January 28, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 10, 2019. By the court's calculation, 49 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

**The Motion to Confirm the Amended Plan is granted.**

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtors, Julius T. Jarvis and Christina M. Jarvis ("Debtor") has provided evidence in support of confirmation.

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response indicating non-opposition on January 10, 2020. Dckt. 74. However, the Trustee indicated that the monthly dividend to Class 1 Creditor US Bank Home Mortgage is $3.92 per month. The Trustee's software is designed to disburse monthly payments of $15.00, or more. Therefore, until the payments to this creditor accumulate to $15.00, or more, they will not be disbursed.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by the debtors, Julius T Jarvis and Christina M Jarvis ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and Debtor's Amended Chapter 13 Plan filed on December 10, 2019, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"),for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.