

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

February 4, 2020 at 3:00 p.m.

1. [20-20111-E-13](#) **ROSS SANCHEZ** **MOTION TO EXTEND AUTOMATIC**
[MJD-1](#) **Matthew DeCaminada** **STAY**
1-16-20 [16]

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the 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 13 Trustee, creditors, and Office of the United States Trustee on January 16, 2020. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

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

The Motion to Extend the Automatic Stay is granted.

Ross Joe Sanchez ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 19-25922-E-13C) was dismissed on

November 29, 2019, after Debtor failed to pay filing fees. *See* Order, Bankr. E.D. Cal. No. 19-25922-E-13C, Dckt. 21, November 29, 2019. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because Debtor was unable to make plan payments. Declaration, Dckt. 18. His former attorney advised his spouse to make vehicle loan payments directly to the lender outside of the plan, and not restructure this vehicle loan payment which led to an increase in his plan payments by approximately \$400 for months 48-60 of the plan. *Id.*

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). As this court has noted in other cases, Congress expressly provides in 11 U.S.C. § 362(c)(3)(A) that the automatic stay **terminates as to Debtor**, and nothing more. In 11 U.S.C. § 362(c)(4), Congress expressly provides that the automatic stay **never goes into effect in the bankruptcy case** when the conditions of that section are met. Congress clearly knows the difference between a debtor, the bankruptcy estate (for which there are separate express provisions under 11 U.S.C. § 362(a) to protect property of the bankruptcy estate) and the bankruptcy case. While terminated as to Debtor, the plain language of 11 U.S.C. § 362(c)(3) is limited to the automatic stay as to only Debtor. The subsequently filed case is presumed to be filed in bad faith if one or more of Debtor's cases was pending within the year preceding filing of the instant case. *Id.* § 362(c)(3)(C)(i)(I). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* § 362(c)(3)(C).

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

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

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

Debtor has sufficiently demonstrated the case was filed in good faith under the facts of this case and the prior case for the court to extend the automatic stay.

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

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

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

hearing.

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

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

2. [19-27438-E-13](#) **CHRISTOPHER/JEANNETTE** **OBJECTION TO CONFIRMATION OF**
[DPC-1](#) **COBABE** **PLAN BY DAVID P CUSICK**
 Paul Bains **1-14-20 [17]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor’s Attorney on January 14, 2020. By the court’s calculation, 21 days’ notice was provided. 14 days’ notice is required.

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

-----.

The Objection to Confirmation of Plan is sustained.

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

- A. The Plan unfairly discriminates against unsecured claims.

DISCUSSION

Trustee's objections are well-taken.

Unfair Discrimination Against Unsecured Claims

Trustee opposes confirmation due to possible unfair discrimination to unsecured claims under 11 U.S.C. § 1322(b)(1). Debtor's Petition lists a total of \$79,620.33 in unsecured nonpriority claims. Dckt. 1. Debtor proposes to pay 52% to unsecured claims. However, Debtor proposes to pay creditors Mohela/Department of Education and Navient (collectively "Student Loans Creditors") directly. According to Debtor's Schedule E/F, Student Loans Creditors have unsecured claims totaling \$42,214.59. Thus, by paying the Student Loans Creditors directly, Debtor proposes to pay their student loans approximately a 64% dividend, compared to the 52% dividend to all other unsecured claims listed. Thus, the Plan unfairly discriminates against all other unsecured claims.

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 31, 2019. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied.

The debtor, Christa Lynne Hylan ("Debtor"), seeks confirmation of the Amended Plan. 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 7, 2020. Dckt. 95. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor filed two plans with difference terms as one document.
- B. Debtor's confirmed Plan provided for non-exempt funds to be contributed to the plan, and this term is not included in the new proposed Plan.
- C. Debtor and non-filing spouse failed to provide pay advices or business after changing employment.
- D. Motion incorrectly states the petition date and number of amended plans.

CREDITOR'S OPPOSITION

American Credit Acceptance LLC ("Creditor") holding a secured claim filed an Opposition on January 20, 2020. Dckt. 109. Creditor opposes confirmation of the Plan on the basis that:

- A. Debtor has failed to make monthly Plan payments since her case was filed over a year ago.
- B. Debtor is unlikely to be able to make the Plan payments by the terms of the Third Amended Plan.
- C. Creditor is not adequately protected under the Plan.

DISCUSSION

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

11 U.S.C. § 1325(a)(1) provides for confirmation of a plan if it complies with Chapter 13 provisions and other applicable Code provisions. Indeed, Debtor filed two plans with her Motion to Confirm. Dckt. 88. The first plan that appears, titled "Amended Plan," provides under Section 7 that "Debtor has paid \$100.00 through December 31, 2019. Commencing January 25, 2020 plan payments shall be \$922.00 per month." *Id.* at 7. This "Amended Plan" is dated December 31, 2019. The second plan attached, titled "Chapter 13 Plan," provides under Section 7, that "Debtor has paid \$1,750.00 through December 31, 2019. Commencing January 25, 2020 plan payments shall be \$922.00 per month." *Id.* at 14. This Plan is also dated December 31, 2019.

The court is uncertain as to which Plan it would be confirming. Thus, the Plan does not comply with 11 U.S.C. § 1325(a)(1).

The Amended Plan does not comply with 11 U.S.C. §§ 1322 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, Christa Lynne Hylan ("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.

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 January 16, 2020. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

- A. Debtor failed to provide social security number at the First Meeting of Creditors.
- B. Debtors failed to provide business documents.
- C. Debtors failed to provide payment advices.

DISCUSSION

Trustee's objections are well-taken.

Failure to Provide Social Security Number

Every individual debtor shall bring to the meeting of creditors under 11 U.S.C. § 341 evidence of social security number(s), or a written statement that such documentation does not exist. FED. R. BANK. P. 4002(b)(1)(B). Without the required documents, the Trustee is unable to properly examine the Debtor at the meeting of creditors.

Failure to File Documents Related to Business

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

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

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

Failure to Provide Pay Advices

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

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

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor’s Attorney, and Chapter 13 Trustee on January 16, 2020. By the court’s calculation, 19 days’ notice was provided. 14 days’ notice is required.

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

-----.

The Objection to Confirmation of Plan is sustained.

U.S. Bank, N.A., successor trustee to LaSalle Bank National Association, on behalf of the holders of Bear Stearns Asset Backed Securities I Trust 2007-HE1, Asset-Backed Certificates Series 2007-HE1, by and through its servicing agent Select Portfolio Servicing, Inc., as its attorney in fact, (“Creditor”) holding a secured claim opposes confirmation of the Plan on the basis that:

- A. Debtor’s proposed Plan fails to cure arrearage owed to Creditor.

DISCUSSION

Creditor’s objection is well-taken.

Failure to Cure Arrearage of Creditor

The objecting creditor holds a deed of trust secured by Debtor’s residence. Creditor has filed a timely proof of claim in which it asserts \$16,349.50 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 U.S. Bank, N.A., successor trustee to LaSalle Bank National Association, on behalf of the holders of Bear Stearns Asset Backed Securities I Trust 2007-HE1, Asset-Backed Certificates Series 2007-HE1, by and through its servicing agent Select Portfolio Servicing, Inc., as its attorney in fact (“Creditor”) holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

The Motion to Confirm the Plan is denied.

The debtor, Willie Jean Norman ("Debtor") seeks confirmation of the Chapter 13 Plan. The Plan provides monthly plan payments of \$400.00 commencing on January 2020 for the remainder of the Plan, and a 0.00% dividend to unsecured claims totaling \$15,864.17. Plan, Dckt. 36. 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 21, 2020. Dckt. 38. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor is delinquent in plan payments.
- B. Debtor incorrectly states the date of the prior Plan.
- C. Debtor removed a previously listed lease without explanation.

DISCUSSION

Prior Plan

Debtor incorrectly states in the Motion filed with the proposed Amended Plan that the original plan was filed on July 9, 2019. The original Plan was filed on September 4, 2019. Dckt. 3.

Executory Contracts and Unexpired Leases

Debtor's Schedule G lists a month to month residential lease with Van Alstine Place Apartments, which according to Debtor's Petition is where he resides. Dckt. 1. This lease was included in Debtor's original Plan. Dckt. 3. However, this lease is no longer listed under Section 4 of Debtor's proposed Plan. This Section provides that "any executory contract or unexpired lease not listed in the table below is rejected."

Thus, Trustee argues he is not certain whether the lease is expired, or if unexpired, why the Debtor is rejecting the lease and also providing for payment.

Delinquency

Debtor is \$300.00 delinquent in plan payments, which represents a portion of the \$355.00 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 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, Willie Jean Norman ("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.

Failure to Provide Social Security Number

Every individual debtor shall bring to the meeting of creditors under 11 U.S.C. § 341 evidence of social security number(s), or a written statement that such documentation does not exist. FED. R. BANK. P. 4002(b)(1)(B). Debtor failed to provide proof of her Social Security Number at the First Meeting of Creditors. Without the required documents, the Trustee is unable to properly examine the Debtor at the meeting of creditors and creditors may be unable to properly identify this debtor.

Plan Will Not Complete within 60 Months

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to Trustee, the Plan will complete in 448 months. The Plan provides for a payment of \$1,502.58 for one (1) month and then \$176.08 for the remainder of the Plan with a 0.00% dividend to unsecured creditors. This is an average monthly plan payment of \$198.19. Based on Trustee's calculation, the plan payment would need to be raised to approximately \$1,704.00 in order for the plan to timely complete. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

Mis-classification of Creditor

Debtor may not be able to comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor listed creditor GM Financial ("Creditor") as a Class 2(A) in their Plan. According to Creditor's filed Proof of Claim 3-1, the claim is a motor vehicle lease. Additionally, this lease is not listed in Debtor's Schedule G. Dckt. 1. Thus, the GM Financial Claim should be listed under Section 4 of the Plan and Debtor should file an Amended Schedule G listing Creditor as a vehicle lease if Debtor intends to assume the lease.

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 claims Debtor admitted at the Meeting of Creditors that they will no longer receive the \$610.00 rental income listed in Schedule I. Dckt. 1.

Additionally, Debtor lists three vehicle expenses totaling \$1,572.00 (lines 17a through 17c). Dckt. 1. Debtor's Plan lists the same vehicles as Class 2 claims. Thus, the court is uncertain as to Debtor's actual expenses. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

The Plan does not comply with 11 U.S.C. §§ 1322 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.

8. [19-27487-E-13](#) **RICHARD/STEPHANIE ACOSTA** **OBJECTION TO CONFIRMATION OF PLAN BY ACAR LEASING LTD**
[JHW-1](#) **Marc Carpenter** **12-24-19 [16]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on December 24, 2019. By the court’s calculation, 42 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.

Acar Leasing LTD dba GM Financial Leasing (“Creditor”) holding a secured claim opposes confirmation of the Plan on the basis that:

- A. Debtor’s Plan failed to assume or reject the lease with Creditor.
- B. Debtor cannot “cram-down” a lease.

DISCUSSION

Creditor's objection is well-taken.

Modification of a Lease

Debtor lists Creditor's lease as a Class 2 claim of the proposed Plan. Dckt. 5. Debtor failed to list this lease under the correct section— Section 4 if Debtor intends to assume this lease. By listing this claim under the wrong section, Debtor proposes to “cram-down” the lease. 11 U.S.C. § 1322(b)(2) allows for the modification of certain secured and unsecured claims but it does not extend to leases. Thus, Debtor's modification violates 11 U.S.C. § 1322(b)(2).

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 Acar Leasing LTD dba GM Financial Leasing (“Creditor”) holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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 13, 2019. By the court's calculation, 53 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 granted.

The debtor, Michelle Annette Rosiles ("Debtor") seeks confirmation of the Chapter 13 Plan. The Plan provides Debtor has paid in \$6,767.66 through December 13, 2019, and commencing December 25, 2019 plan payments will be \$1,535.00 for the remainder of the plan, with a 0.00% dividend to unsecured claims totaling \$1,761.14. Plan, Dckt. 43. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on January 8, 2020. Dckt. 52. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor failed to provide income related information.
- B. Debtor is delinquent in plan payments.

DEBTOR'S REPLY

Debtor filed a Reply on January 9, 2020. Dckt. 54.

DISCUSSION

Cannot Comply with the Plan

Debtor may not be able to comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor's Schedule I filed with the present Motion to Confirm lists several employers (Inclusive Community Resources and Advantage Technical Resourcing, Inc.) without clarifying wage details for each. Additionally, the Declaration accompanying this Motion, states that Debtor has "taken in a renter" but provides no details on this event. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

In her Reply, Debtor asserts confirmation of her plan on the basis that she filed an amended Schedule I clarifying her employment and rental income. The docket reflects that an Amended Schedule I was filed on January 9, 2020. Dckt. 57.

The amended Schedule I states that Debtor has been employed with Advantage Technical Resourcing, Inc since September 1, 2019 and has been employed with Inclusive Community Resources since August 1, 2019. *Id.* Further, the Amended Schedule I clarifies that Debtor has been receiving rental income of a \$1,000 since September 1, 2019. *Id.*

Delinquency

The Chapter 13 Trustee asserts that Debtor is \$5.00 delinquent in plan payments, which represents less than one month of the \$1,353.41 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Debtor further request confirmation by stating that she will add an additional \$5.00 to her next payment to bring her account current. Dckt. 54.

Both of Trustee's objection being addressed, the Plan complies with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is confirmed.

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

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

The Motion to Confirm the Chapter 13 Plan filed by the debtor, Michelle Annette Rosiles ("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 Chapter 13 Plan filed on December 13, 2019, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor (*pro se*) on January 6, 2020. By the court’s calculation, 29 days’ notice was provided. 14 days’ notice is required.

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

-----.

The Objection to Confirmation of Plan is sustained.

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

- A. Debtor is delinquent in Plan payments.
- B. Debtor failed to provide tax returns.
- C. Debtor failed to provide pay advices.
- D. Debtor failed to lists all assets and debts.
- E. Debtor may not be able to make plan payments.
- F. Debtor mis-classified a creditor.

DISCUSSION

Trustee's objections are well-taken.

Delinquency

Debtor is \$240.00 delinquent in plan payments, which represents one month of the \$240.00 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).

Failure to Provide Pay Stubs & Tax Returns

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

Failure to Complete Bankruptcy Forms

Debtor has failed to file a statement of gross business income and expenses attached to Schedule I. Line 8a of Schedule I requires Debtor to “[a]ttach a statement for each property and business showing gross receipts, ordinary and necessary business expenses, and the total monthly net income.” Debtor is required to submit that statement and cooperate with Trustee. 11 U.S.C. § 521(a)(3). Debtor has not provided the required documents.

Infeasible Plan

Trustee alleges that the Plan is not feasible. 11 U.S.C. § 1325(a)(6). First, the Plan proposes monthly payments of \$240.00 for 60 months. However, a look at Debtor's Schedule I shows a gross income of \$2,247.50, and with expenses totaling \$2,144.66, Debtor is left with a net income of \$120.84. Dckt. 15. Debtor may not be able to make plan payments.

Furthermore, according to Debtor's Schedule J— she lists a home ownership expense for \$483.66, a real estate taxes and insurance expense for \$431.00, and a car payment for \$332.00. *Id.* However, under Class 1 of the Plan, Debtor lists a post-petition payment of \$842.00 for New Rez Home Mortgage, with a \$132,940.28 in arrearage and a post-petition payment of \$332.50 for Cash into Cash (car payment), with a \$4,790.05 in arrearage.

Thus, the Plan may not be confirmed.

Mis-classified Debt

Plan may not comply with the law. 11 U.S.C. § 1325(a)(1). Trustee asserts that at the

Meeting of Creditors Debtor testified that creditor Check into Cash listed in Class 1 of the Plan is secured by her 2005 BMW 325I. As such, this debt should be listed in Class 2 of the Plan.

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 31, 2019. By the court’s calculation, 35 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Plan is denied.

The debtor, Pete A. Garcia (“Debtor”) seeks confirmation of the Chapter 13 Plan. The Plan provides for monthly plan payments of \$6,400.00 for 52 months commencing January 25, 2020, with a 100% dividend to unsecured claims totaling \$7.00. Plan, Dckt. 99. 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 21, 2020. Dckt. 106. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor may not be able to make Plan payments.
- B. Debtor’s bankruptcy documents are inaccurate and inconsistent.
- C. Plan payment comes due prior to the hearing date.

DISCUSSION

Feasibility

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor has failed to file an Amended Statement of Financial Affairs identifying any business in the last four (4) years, even though Debtor's Amended Schedule I list Debtor as a self-employed rental manager with a monthly income of \$6,700.00. Dckt. 104. The prior Schedule I listed a monthly business income of \$6,300.00 Dckt. 75. Debtor's Amended Business Income and Expense form identified \$0.00 in estimated expenses. Dckt. 75. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Failure to Properly Complete Documents

Debtor's Schedule H incorrectly states that he does not live in a community property state and yet his address is in Sacramento, California. Furthermore, Debtor's Petition lacks Debtor's middle name and states an incorrect date for his previous bankruptcy.

According to Trustee, Debtor stated that he would be amending his Petition in order to correct the omission of his middle name and correct the prior bankruptcy date. However, a look at the docket shows that no such amended petition has been filed.

Debtor filed a Reply to Trustee's Opposition on January 28, 2020. Dckt. 110. Debtor simply states that the Debtor will be current with the proposed Chapter 13 plan payments on or before the hearing on this matter.

Unfortunately for Debtor, this does not address the current issues with his plan and petition.

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, Pete A. Garcia ("Debtor"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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 30, 2019. By the court’s calculation, 36 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

The Motion to Confirm the Modified Plan is denied.

The debtor, Evangelina Gerales Clariza (“Debtor”) seeks confirmation of the Modified Plan on the basis that Debtor cannot complete the plan as originally confirmed because Debtor has lost her home and managed to relocate into a rental. Declaration, Dckt. 69.

The Modified Plan provides for plan payments of \$375.00 for 42 months commencing December 25, 2019, and a 0.00 percent dividend to unsecured claims totaling \$10,696.14. Modified Plan, Dckt. 70. 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 14, 2020. Dckt. 77. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor’s plan proposes conflicting commitment periods.
- B. Plan states incorrect total paid as of December 2019.

C. Debtor has an unexplained decrease in income.

D. Debtor failed to file a Change of Address.

Debtor's Response

Debtor filed a Response addressing Trustee's Opposition to Confirmation on January 27, 2020. Dckt. 82.

DISCUSSION

Plan Term is Fewer Than 60 months

The Plan violates 11 U.S.C. § 1325(b)(4)(B) because the Plan will complete in less than the permitted sixty months without providing full payment of all allowed unsecured claims. Debtor has proposed a plan term of 42 months, which means that the Plan term ends in 57 months.

Incorrect Total Paid Into Plan

Debtor's Plan states a total of \$31,000.00 paid through November 2019 (month #15). Debtor made two payments in December 2019 totaling \$775.00. Thus, the correct total paid as of December 2019 is \$31,775.00.

Debtor addressed both objections above by requesting the court include language in the Order providing the following: "Debtor has paid a total of \$31,775.00 through November 2019. Plan payments of \$375.00 per month will commence December 25, 2019 for 45 months."

Unexplained Decrease in Income

There has been a decrease in Debtor's combined income. According to Debtor's original Schedule J and a later Schedule J filed in support of a Motion to Extend the Automatic Stay, Debtor listed a monthly combined income of \$4,487.92. On December 31, 2019, Debtor filed an Amended Schedule J which states a monthly combined income of \$3,889.86. Dckt. 72.

Trustee requests that Debtor file a Supplemental Schedule I. This is not an unreasonable request and Debtor should file a Supplemental Schedule I.

Debtor's Response failed to address Trustee's request and a Supplemental Schedule I has not been filed.

Change of Address

According to Debtor's Declaration in support of the Motion to Confirm the Plan, Debtor has moved from her residence and has relocated to a rental. In her Response, Debtor stated that Debtor would update the court with her current address. Docket reflects that a Change of Address for Debtor was filed on January 29, 2020. Dckt. 84.

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, Evangelina Gerales Clariza (“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.

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 January 16, 2020. By the court’s calculation, 19 days’ notice was provided. 14 days’ notice is required.

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

-----.

The Objection to Confirmation of Plan is sustained.

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

- A. Debtor may not be able to make plan payment.
- B. The Chapter 13 documents are incomplete.

DISCUSSION

Trustee’s objections are well-taken.

Infeasible Plan

Debtor may not be able to make plan payments under 11 U.S.C. § 1325(a)(6). Trustee asserts the debtor, Elysha Noelle Lopez, (“Debtor”) declared at the First Meeting of Creditors that her business was no longer operating. Yet, Debtor’s Schedule I still indicates a net business income of \$2,500 per

month. Dckt. 1. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Chapter 13 Documents are Incomplete

Debtor may not be able to comply with the Plan under 11 U.S.C. § 1325(a)(6). Trustee contends Debtor stated at the First Meeting of Creditors that she has a landlord which was not been identified on her petition.

Additionally, Debtor has only listed a 2010 Hyundai Sonata as her sole asset. Dckt. 1. A closer look at Debtor's Schedule A/B seems to show that Debtor has no other assets, such as: household goods and furnishings, electronics, or any clothing. Dckt. 1. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

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

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on January 16, 2020. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

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

-----.

The Objection to Confirmation of Plan is sustained.

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

- A. Debtor failed to appear at the Meeting of Creditors.
- B. Debtor is delinquent in plan payments.
- C. Debtor's Attorney seeks approval of "no-look" fee.

DISCUSSION

Trustee's objections are well-taken.

Failure to Appear at 341 Meeting

Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341.

Appearance is mandatory. *See* 11 U.S.C. § 343. Attempting to confirm a plan while failing to appear and be questioned by Trustee and any creditors who appear represents a failure to cooperate. *See* 11 U.S.C. § 521(a)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

The Continued Meeting of Creditors has been scheduled for February 6, 2020.

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).

“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. According to the State Bar of California website, Thomas O. Gillis has been suspended from practice of law beginning 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 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.

DEBTOR DISMISSED:

01/21/2020

JOINT DEBTOR DISMISSED:

01/21/2020

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 Not Provided. **No Certificate of Service was filed** with the Motion to Vacate and Notice of Hearing.

The Motion to Vacate was **not** 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.

The Chapter 13 Trustee filed a response, having received the documents electronically. Fed. R. Bankr. P. 9036. However, the court cannot identify how the Debtor asserts that other parties in interest have been served.

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 Vacate is granted, and the order dismissing case for failure to timely file documents (~~Dckt. 25~~) is vacated.

Shavina Denise Thomas and Donald Wayne Thomas (“Debtor”) filed the instant case on December 20, 2019. Dckt. 1.

On December 27, 2019, the Clerk of the Court filed a Notice of Intent to Dismiss the Case due to failure to timely file documents. Dckt. 10. An Order Dismissing the Case for Failure to Timely File Documents was filed on January 21, 2020. Dckt. 25.

On January 21, 2020, Debtor filed this instant Motion to Vacate, claiming that counsel in good faith believed he has filed the necessary documents.

Debtor seeks to have the order dismissing the case vacated, per Federal Rule of Civil Procedure 60(b).

TRUSTEE'S OPPOSITION

On January 24, 2020, Trustee filed an Opposition. Dckt. 40. Trustee opposes on the basis that:

- A. The evidence supporting the motion is not clear as the declaration was not filed separately and Debtor's Counsel did not give sufficient details for the court to make a determination whether the failure to submit the Disclosure of Attorney Compensation was excusable neglect.
- B. Debtor's Counsel overlooks that notice regarding the failure to file and a resulting dismissal was received twice— on December 27, 2019 as part of the Notice of Intent (Dckt. 8) and on January 7, 2020, as part of the Order Extending Deadlines (Dckt. 16).
- C. The court should consider the following dates as it considers whether to grant relief: the Meeting of Creditors was scheduled for January 30, 2020 and the deadline for parties to object to confirmation is normally seven (7) days after the Meeting.

DEBTOR'S COUNSEL DECLARATION

On January 29, 2020, Debtor's Counsel filed a declaration. Dckt. 43. Counsel explains that the Motion's deficiencies were the result of "exigent circumstances" as it was a last minute attempt by counsel to ensure that the matter would be heard on the February 4, 2020 hearing date after it was brought to his attention that the case had been dismissed.

APPLICABLE LAW

Federal Rule of Civil Procedure Rule 60(b), as made applicable by Federal Rule of Bankruptcy Procedure 9024, governs the reconsideration of a judgment or order. Grounds for relief from a final judgment, order, or other proceeding are limited to:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;

- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

FED. R. CIV. P. 60(b). A Rule 60(b) motion may not be used as a substitute for a timely appeal. *Latham v. Wells Fargo Bank, N.A.*, 987 F.2d 1199, 1203 (5th Cir. 1993). The court uses equitable principles when applying Rule 60(b). See 11 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 2857 (3d ed. 1998). The so-called catch-all provision, Federal Rule of Civil Procedure 60(b)(6), is “a grand reservoir of equitable power to do justice in a particular case.” *Uni-Rty Corp. V. Guangdong Bldg., Inc.*, 571 F. App’x 62, 65 (2d Cir. 2014) (citation omitted). While the other enumerated provisions of Rule 60(b) and Rule 60(b)(6) are mutually exclusive, relief under Rule 60(b)(6) may be granted in extraordinary circumstances. *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 863 & n.11 (1988).

A condition of granting relief under Rule 60(b) is that the requesting party show that there is a meritorious claim or defense. This does not require a showing that the moving party will or is likely to prevail in the underlying action. Rather, the party seeking the relief must allege enough facts that, if taken as true, allow the court to determine if it appears that such defense or claim could be meritorious. 12 JAMES WM. MOORE ET AL., MOORE’S FEDERAL PRACTICE ¶¶ 60.24[1]–[2] (3d ed. 2010); see also *Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984).

Additionally, when reviewing a motion under Rule 60(b), courts consider three factors: “(1) whether the plaintiff will be prejudiced, (2) whether the defendant has a meritorious defense, and (3) whether culpable conduct of the defendant led to the default.” *Falk*, 739 F.2d at 463 (citations omitted).

DISCUSSION

As an initial policy matter, the finality of judgments is an important legal and social interest. The standard for determining whether a Rule 60(b)(1) motion is filed within a reasonable time is a case-by-case analysis. The analysis considers “the interest in finality, the reason for delay, the practical ability of the litigant to learn earlier of the grounds relied upon, and prejudice to other parties.” *Gravatt v. Paul Revere Life Ins. Co.*, 101 F. App’x 194, 196 (9th Cir. 2004) (citations omitted); *Sallie Mae Servicing, LP v. Williams (In re Williams)*, 287 B.R. 787, 793 (B.A.P. 9th Cir. 2002) (citation omitted).

This case was filed on December 20, 2019. Dckt. 1. It follows two prior cases: the first one was filed by Debtor Shavina Thomas (Case No. 18-25840), and the second one by Debtor Donald Thomas (Case No. 19-24006). Both cases within the last 16 months. In our present case, Debtors filed jointly.

As stated in the Motion, the present case was dismissed for failure to timely file documents.

There are deficiencies in the present motion. There is a section simply marked “xxxx.” No evidence is filed with the Motion. No certificate of service was filed.

On January 29, 2020, in response to the Opposition filed by the Chapter 13 Trustee, Debtor’s counsel filed his declaration in support of the Motion to Vacate. Dckt. 43.

In his Declaration, counsel states that he filed a large number of “motions and case deficiencies on January 21, 2020.” *Id.* at p.1:19-20. He states the PACER ‘free look” for “the January 17, 2020 filings did not arrive until the morning of January 21, 2020.”

Counsel then goes on to state that the Deputy Clerk of the Court did not give him a “courtesy telephone reminder” of there being a deficiency. He states in the past that the Clerk’s Office has provided such a reminder for counsel. With this, counsel appears to be “blaming” the court and the Clerk’s Office for his filing error.

Counsel then goes on to outline for the court the very few times that counsel has filed a motion to vacate a dismissal of a bankruptcy case, listing three in the prior eight years. Such is consistent with the court’s memory that counsel is not one who is regularly attempting to seek relief for errors.

He then goes on to state how in the rush of addressing the dismissal, he used an old, seldom used template created for such motions.

The court turn to the case history. A Notice of Incomplete of Filing and Notice of Intent to Dismiss Case if Documents Are Not Timely Filed was filed on December 27, 2019. Dckt. 10. A January 3, 2020 deadline was provided. *Id.* Notwithstanding, Debtors asked for more time and on January 3, 2020, filed an Ex-Parte Application for Extension of Time to Fulfill Deficient Initial Filing. Dckt. 13. The court granted the 14-day extension requested on January 6, 2020. Dckt. 15. The new deadline to file was January 17, 2020. *Id.* The order explicitly states that failure to meet the new deadline will result in dismissal. *Id.*

However, in light of the information provided, the court can see that the failure to submit the document was a clerical error. Debtors had filed several documents on the deadline, including:

1. Summary of Assets and Liabilities and Schedules A/B, C, D, E/F, G, H, I, J (Dckt. 22),
2. Statement of Financial Affairs (Dckt. 23), and
3. Chapter 13 Statement of Current Monthly Income (Dckt. 24).

It seems the only missing document was the Disclosure of Attorney Compensation. Dckt. 34.

~~Therefore, in light of the foregoing, the Motion is granted, and the order dismissing the case for failure to timely file documents (Dckt. 25) is vacated under the following conditions:~~

- A. A new date will be set for the Meeting of Creditors;
- B. A new deadline for objections shall be seven (7) days after the Meeting of Creditors;
- C. Proof of Claim deadline shall be extended to March 30, 2020; and
- D. Deadline for dischargeability and non-dischargeability of debt shall be

set to April 30, 2020.

~~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 Vacate filed by Shavina Denise Thomas and Donald Wayne Thomas (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~**IT IS ORDERED** that the Motion is granted, and the order dismissing the case for failure to timely file documents (Dckt. 25) is vacated.~~

~~**IT IS FURTHER ORDERED** that:~~

~~A. A new date will be set for the Meeting of Creditors;~~

~~B. A new deadline for objections shall be seven (7) days after the Meeting of Creditors;~~

~~C. Proof of Claim deadline shall be extended to March 30, 2020; and~~

~~D. Deadline for dischargeability and non-dischargeability of debt shall be set to April 30, 2020.~~

~~No other relief is granted.~~

16. [19-27862-E-13](#) SHAVINA/DONALD THOMAS
[RJ-2](#) Richard Jare
17 thru 19

MOTION TO VALUE COLLATERAL OF
CHRYSLER CAPITAL (SANTANDER)
1-21-20 [\[26\]](#)

DEBTOR DISMISSED:

01/21/2020

JOINT DEBTOR DISMISSED:

01/21/2020

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.

This case having been dismissed and there being a Motion to Vacate pending, the court issues no tentative ruling.

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, creditors, and Office of the United States Trustee on January 21, 2020. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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 Chrysler Capital (Santander) ("Creditor") is \$ **XXXXXXXXXX, and Creditor's secured claim is determined to have a value of \$ **XXXXXXXXXX**.**

The Motion filed by Shavina Denise Thomas and Donald Wayne Thomas ("Debtor") to value the secured claim of Chrysler Capital (Santander) ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 29. Debtor is the owner of a 2014 Dodge Dart ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$2,800.00 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.*

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on August 19, 2014, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$16,642.00. Declaration, Dckt. 29. 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 \$2,800.00, 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 Shavina Denise Thomas and Donald Wayne Thomas ("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 Chrysler Capital (Santander) ("Creditor") secured by an asset described as 2014 Dodge Dart ("Vehicle") is determined to be a secured claim in the amount of \$2,800.00, 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 \$2,800.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.~~

DEBTOR DISMISSED:

01/21/2020

JOINT DEBTOR DISMISSED:

01/21/2020

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.

This case having been dismissed and there being a Motion to Vacate pending, the court issues no tentative ruling.

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, and Office of the United States Trustee on January 21, 2020. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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 Regional Acceptance Company ("Creditor") is \$ **XXXXXXXXXX, and Creditor's secured claim is determined to have a value of \$ **XXXXXXXXXX**.**

The Motion filed by Shavina Denise Thomas and Donald Wayne Thomas ("Debtor") to value the secured claim of Regional Acceptance Company ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 33. Debtor is the owner of a 2017 Dodge Journey ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$9,500.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on July 5, 2017 to secure a debt owed to Creditor with a balance of approximately \$20,339.98. Proof of Claim, No. 5-1. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is ~~determined to be in the amount of \$9,500.00, the value of the collateral. See 11 U.S.C. § 506(a).~~ The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

~~The Motion to Value Collateral and Secured Claim filed by Shavina Denise Thomas and Donald Wayne Thomas ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing;~~

~~**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Regional Acceptance Company ("Creditor") secured by an asset described as 2017 Dodge Journey ("Vehicle") is determined to be a secured claim in the amount of \$9,500.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$9,500.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.~~

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

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

Sufficient Notice **Not** 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 **January 14, 2020**. By the court's calculation, **21** days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

At the hearing, Counsel for the Debtor **XXXXXXXXXX**

The Motion to Sell Property has not been properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Sell Property is **XXXXX.**

The Bankruptcy Code permits Paul Jason Brown and Ashanna Olga Brown, Chapter 13 Debtor, ("Movant") to sell property under the confirmed plan after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the real property commonly known as 563 Gregory Drive, Vacaville, California ("Property").

INSUFFICIENT NOTICE OF MOTION

Movant provided 21 days' notice of this Motion. Federal Rule of Bankruptcy Procedure 2002(a)(2) requires a minimum of twenty-one days' notice of the hearing, and Local Bankruptcy Rule 9014-1(f)(1)(B) requires an additional fourteen days for parties to file written opposition. Those time periods do not run concurrently. Those two minimums total thirty-five days. Movant has provided 14 fewer days than the minimum. Therefore, the Motion is denied without prejudice.

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

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

hearing.

The Motion to Sell filed by Paul Jason Brown and Ashanna Olga Brown, Chapter 13 Debtor, (“Movant”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice.

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

The Motion to Sell Property is granted.

The proposed purchaser of the Property is Byron and Angelina Tona, and the terms of the sale are:

- A. Purchase Price of \$480,000.00.
- B. Initial deposit of \$4,750.00
- C. Seller to credit buyer \$5,000.00 towards closing costs.
- D. Buyer to pay escrow fees and title’s owner insurance.
- E. Seller to pay County transfer taxes.
- F. Property to be sold “as-is.”
- G. Escrow to close 30 days after acceptance.
- H. Debtor to be paid any excess funds after mortgage loan is paid in full and Trustee pays claims at 100% and administrative expenses.

CREDITOR’S RESPONSE

Creditor Wells Fargo Bank, N.A. (“Creditor”) filed a Response on January 21, 2020. Dckt. 52. Creditor does not oppose the motion contingent on the following:

- A. Creditor’s Claim shall be paid off in full through escrow, prior to the

distribution of funds to the Chapter 13 Trustee and Debtor proposed in Paragraph 9 of the Motion to Sell;

- B. Creditor shall be permitted to submit an updated payoff demand to the applicable escrow or title company facilitating the sale so that Creditor's Claim is paid in full at the time the sale of the Property is finalized;
- C. In the event that the sale of the Property does not take place, Creditor shall retain its Lien for the full amount due under the Subject Loan.

TRUSTEE'S RESPONSE

Trustee filed a Response on January 27, 2020. Dckt. 54. Trustee points out, as noted above, that Debtor's notice is deficient but that the court should consider the motion allowing opposition at the hearing as the motion were filed as LBR 9014-1(f)(2). Further, since the Motion provides for responses to be sent only to the U.S. Trustee, the Chapter 13 Trustee wants to be heard on the response in the event that any party responds.

Lastly, Trustee does not oppose the sale or the intended disposition of the proceeds.

DEBTOR'S RESPONSE

On January 29, 2020, Debtor filed a response to address issues raised by the Chapter 13 Trustee and Creditor. Dckt. 56. Debtor first states that there is no opposition to Creditor submitting a demand into escrow to be paid on its secured claim. The Motion states that it does not seek a sales "free and clear" of any liens, but that the consent of creditor (as in the release of its lien through escrow) will be required. Motion, ¶ 6; Dckt. 47. Creditor was not incorrect to make sure this point was clear and whether the court thought "consent" was by a reconveyance of the deed of trust through escrow or required consent to have the property sold free of its lien and then be paid through the bankruptcy plan.

DISCUSSION

At the time of the hearing, the court announced the proposed sale and requested that all other persons interested in submitting overbids present them in open court. At the hearing, the following overbids were presented in open court: **XXXXXXXXXX**.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because it is in the best interest of the creditors— the sale will pay Wells Fargo Home Mortgage loan in full, generate enough funds to pay all of Debtor's allowed creditors a 100% dividend.

Realtor Fees

The Motion does not seek the payment of any fees for the Realtors involved in the sale transaction, whether for the Debtor as seller or the Buyer. The Purchase and Sale Agreement (California Association of Realtors Form AD, Revised 12/18); Exhibit A, Dckt. 59; lists two Real Estate Brokers involved in the transaction: Level Up Realty - The Solari Group and REMAX Gold.

The Purchase and Sale Agreement states in Section 18 that Buyer or Seller has agreed to pay compensation in a separate written agreement. Following Section 32 of the Purchase and Sale Agreement is a box with is titled “Real Estate Brokers.” Exhibit A, p. 10 of 10; *Id.* It states that Buyer’s Broker will that portion of the Seller’s (Debtor’s) broker’s “proceeds” from the sale as specified in the “MLS.”

The court notes that the Debtor has not sought the employment of a real estate professional pursuant to 11 U.S.C. § 327 for which the court can allow compensation which can then be shared with the Buyer’s broker.

At the hearing, counsel for the Debtor confirmed that the real estate commission to be paid to Debtor’s Realtor, Roderick Giles of REMAX Gold, is **XXXXXXXXXX** %, of which **XXXXXXXXXX** % is to be paid to Jason Taylor and Nicole Solari of Level Up Realty - The Solari Group.

On or before **XXXXXXXXXX**, 2020, Counsel for Debtor shall file with the court an *ex parte* motion for retroactive authorization to employ Roderick Giles of REMAX Gold, and for authorization to pay a commission of **XXXXXXXXXX**% of the gross sales price of the Property, of which **XXXXXXXXXX**% will be paid to Jason Taylor and Nicole Solari of Level Up Realty - The Solari Group.

The amount of **XXXXXXXXXX**% of the gross sales price of the Property shall be disbursed from Escrow and paid to Susan Turner to be deposited in her client trust account pending further order of the court, unless the court has issued an order prior to the close of escrow which authorizes the employment, allows the real estate commission, and authorizes payment directly from escrow.

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 Sell Property filed by Paul Jason Brown and Ashanna Olga Brown, Chapter 13 Debtor, (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Paul Jason Brown and Ashanna Olga Brown, Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Byron and Angelina Tona or nominee (“Buyer”), the Property commonly known as 563 Gregory Drive, Vacaville, California (“Property”), on the following terms:

- A. The Property shall be sold to Buyer for \$480,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 50, and as further provided in this Order.
- B. Chapter 13 Debtor is authorized to execute any and all documents reasonably necessary to effectuate the sale.

- C. The sale proceeds shall first be applied to closing costs, prorated real property taxes and assessments, other customary and contractual costs and expenses incurred to effectuate the sale.
- D. The amount of **XXXXXXXXXX**% of the gross sales price of the Property shall be disbursed from Escrow and paid to Susan Turner to be deposited in her client trust account pending further order of the court, unless the court has issued an order prior to the close of escrow which authorizes the employment, allows the real estate commission, and authorizes payment directly from escrow.
- E. Creditor Wells Fargo to be paid in full through escrow, prior to proceeds being distributed to the Trustee.
- F. David Cusick, the Chapter 13 Trustee, shall make written demand and be paid from escrow sufficient monies to pay 100% of all claims, Chapter 13 trustee fees and expenses, and all other administrative expenses.
- G. After payment of all of the above, including the disbursement to the Chapter 13 trustee, all remaining net sales proceeds may be disbursed directly from escrow to the Debtors.

No other relief is granted by the court.

Final Ruling: No appearance at the February 4, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor and Chapter 13 Trustee on December 13, 2019. By the court’s calculation, 53 days’ notice was provided. 44 days’ notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days’ notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days’ notice for written opposition).

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

The Objection to Proof of Claim Number 9-1 of Loantopia LLC is sustained, and the claim is disallowed in its entirety.

The debtor, Nina Yvette Drake, (“Objector”) requests that the court disallow the claim of Loantopia LLC (“Creditor”), Proof of Claim No. 9-1 (“Claim”), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$5,435.39. Objector asserts that the Claim has not been timely filed. *See* FED. R. BANKR. P. 3002(c). The deadline for filing proofs of claim in this case is February 15, 2019. Notice of Bankruptcy Filing and Deadlines, Dckt. 18.

DISCUSSION

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on January 2, 2020. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of Ally Financial (“Creditor”) is granted, and Creditor’s secured claim is determined to have a value of \$20,000.00.

The Motion filed by Teresa Marie Gonsalves and Steven Michael Gonsalves (“Debtor”) to value the secured claim of Ally Financial (“Creditor”) is accompanied by Debtor's declaration. Declaration, Dckt. 52. Debtor is the owner of a 2013 Chevy Silverado (“Vehicle”). Debtor seeks to value the Vehicle at a replacement value of \$20,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on November 22, 2016, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$27,802.37 Proof of Claim, No. 13-1. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of \$20,000.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion to Value Collateral and Secured Claim filed by Teresa Marie Gonsalves and Steven Michael Gonsalves (“Debtor”) having been

value the secured claim of AmeriCredit Financial Services, Inc. (“Creditor”) is accompanied by Debtor’s declaration. Declaration, Dckt. 61. Debtor is the owner of a 2014 Kia Rio (“Vehicle”). Debtor seeks to value the Vehicle at a replacement value of \$8,000.00 as of the petition filing date. As the owner, Debtor’s opinion of value is evidence of the asset’s value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Trustee filed a Response on January 7, 2020. Dckt. 66. Trustee request the court take into consideration that Creditor is included in Class 2(B) of Debtor’s proposed Plan with a claim amount of \$10,001.27, value of \$8,000.00, and monthly dividend of \$155.00. Creditor filed Claim 10-1 for \$10,001.27, claiming \$8,000.00 as secured.

DISCUSSION

The lien on the Vehicle’s title secures a purchase-money loan incurred on December 22, 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 \$10,001.27. Proof of Claim, No. 10-1. Therefore, Creditor’s claim secured by a lien on the asset’s title is under-collateralized. Creditor’s secured claim is determined to be in the amount of \$8,000.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion to Value Collateral and Secured Claim filed by Teresa Marie Gonsalves and Steven Michael Gonsalves (“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 AmeriCredit Financial Services, Inc. (“Creditor”) secured by an asset described as 2014 Kia Rio (“Vehicle”) is determined to be a secured claim in the amount of \$8,000.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$8,000.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

Final Ruling: No appearance at the February 4, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on December 24, 2019. By the court’s calculation, 42 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 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 Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Linda Christina Conkling (“Debtor”), has provided evidence in support of confirmation. No opposition to the Motion has been filed by the Chapter 13 Trustee, David Cusick (“Trustee”), or by creditors. The Trustee filed a Non-Opposition on January 21, 2020. Dckt. 43. The 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 Chapter 13 Plan filed by the debtor, Linda Christina Conkling (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Debtor’s Chapter 13 Plan filed on December 24, 2019, is confirmed. Debtor’s Counsel shall prepare

TRUSTEE'S RESPONSE

Trustee filed a response on January 14, 2020. Dckt. 33. Trustee asserts that Debtor provides creditor on Schedule D and in Class 2B of the proposed Plan.

Further, Trustee states Creditor has not filed a proof of claim. The docket reflects that Creditor filed a proof of claim on January 24, 2020.

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on July, 2016, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$23,669.24. Proof of Claim, No. 9-1. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of \$12,200.00, 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 Maisha Nyota Anderson ("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 Ally Financial ("Creditor") secured by an asset described as 2015 Chevy Impala LS ("Vehicle") is determined to be a secured claim in the amount of \$12,200.00, 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 \$12,200.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

28. [19-26029-E-13](#) **DEBRA THOMPSON** **CONTINUED MOTION TO CONFIRM**
[PGM-1](#) **Peter Macaluso** **PLAN**
12-13-19 [41]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, 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 hearing on the Motion to Confirm is continued to 3:00 p.m. on February 11, 2020.

Continuance of February 4, 2020 Hearing

Pursuant to the Ex Parte Request of counsel for Peritus Portfolio Services, II, LLC, as agent for Westlake Financial Services and concurrence of Debtor's counsel, the hearing is continued one week. The debtor, Debra LaChele Thompson ("Debtor"), seeks confirmation of the Amended Plan.

REVIEW OF MOTION

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 Chapter 13 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.

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

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

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 hearing on the Motion for Relief from the Automatic Stay is continued to 3:00 p.m. on February 11, 2020.

Continuance of February 4, 2020 Hearing

Pursuant to the Ex Parte Request of counsel for Peritus Portfolio Services, II, LLC, as agent for Westlake Financial Services and concurrence of Debtor's counsel, the hearing is continued one week. The debtor, Debra LaChele Thompson ("Debtor"), seeks confirmation of the Amended Plan.

REVIEW OF MOTION

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.

Counsel for Movant who filed the pleadings did not attend the hearing, and therefore was not available to address the concerns addressed above.

The court continues the hearing to 3:00 p.m. on February 4, 2020, to afford counsel to appear at the hearing.