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

**Honorable Christopher M. Klein**
**Bankruptcy Judge**
**Sacramento, California**

**February 11, 2020 at 2:00 p.m.**

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| **1.** | **19-22022-C-13**<br>**PGM-2** | **HAZZEM SIKTA**<br>**Peter Macaluso** | **MOTION TO MODIFY PLAN**<br>**1-3-20 [49]** |

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 3, 2020. By the court's calculation, 39 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, Hazzem Fathi Sikta ("Debtor") seeks confirmation of the Modified Plan to cure a delinquency in plan payments caused by fluctuating income and expenses. Declaration, Dckt. 51. The Modified Plan provides for $10,000 paid through December 2019, and for 52 payments of $2,425.00. Modified Plan, Dckt. 53. 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 28, 2020. Dckt. 61. Trustee opposes confirmation because Debtor is $2,425.00 under funded for the proposed plan ($25,100 under the confirmed plan).

**DEBTOR'S REPLY**

Debtor filed a Reply on February 3, 2020, conceding the delinquency but indicating the delinquency will be cured by the hearing. Dckt. 64.

**DISCUSSION**

Debtor is $2,425.00 delinquent in plan payments, which represents one months of the plan payment (despite the modified plan already waiving several missed payments under the confirmed plan). Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Hazzem Fathi Sikta ("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.

**2.** 19-27823-C-13 **GURBAX/USHA SUNAK** **OBJECTION TO CONFIRMATION OF PLAN BY LEONEL CORTEZ, JR. ET AL.**
**Mary Ellen Terranella**

**THRU #3** **1-23-20 [18]**

**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).**
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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 23, 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.**

Leonel Corrtez, Jr. ("Creditor") holding a secured claim (via judgment lien recorded against two of Debtor's properties) opposes confirmation of the Plan on the basis that its claim is not provided for, and therefore the plan was not proposed in good faith.

In support of the Objection, Creditor filed as Exhibit A judgment lien recorded in Marin county, and Exhibits B and C judgment liens recorded in Solano county. Dckt. 21.

On Schedule D, Creditor is listed with a secured claim of $307,705.00 against real property in Marin county known as 5 Harbor Drive Novato, California. Dckt. 1. However, Debtor on Schedule A lists real property in Solano county known as 6216 Pebble Beach, Vallejo, California. *Id.* According to Exhibits B and C, there appears to be a lien against the Pebble Beach property that was not listed and not accounted for in the plan.

Without providing for the secured claim, the plan is not likely to be feasible. 11 U.S.C. § 1325(a)(6).

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by Leonel Corrtez, Jr. ("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.

| | | | |
|---|---|---|---|
| **3.** | **19-27823-C-13**<br>**DPC-1** | **GURBAX/USHA SUNAK**<br>**Mary Ellen Terranella** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK**<br>**1-29-20 [23]** |

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

**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 29, 2020. By the court's calculation, 13 days' notice was provided, which was what the court required in its order shortening time. Dckt. 28.

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"), filed this Objection largely noting the Objection filed by Leonel Corrtez, Jr. ("Creditor"), a creditor holding a secured claim (via judgment lien recorded against two of Debtor's properties), and arguing that the plan is not feasible because that Creditor's claim was omitted.

In support of the Creditor's Objection, Creditor filed as Exhibit A judgment lien recorded in Marin county, and Exhibits B and C judgment liens recorded in Solano county. Dckt. 21.

On Schedule D, Creditor is listed with a secured claim of $307,705.00 against real property in Marin county known as 5 Harbor Drive Novato, California. Dckt. 1. However, Debtor on Schedule A lists real property in Solano county known as 6216 Pebble Beach, Vallejo, California. *Id.* According to Exhibits B and C, there appears to be a lien against the Pebble Beach property that was not listed and not accounted for in the plan.

Without providing for the secured claim, the plan is not likely to be feasible. 11 U.S.C.

§ 1325(a)(6).

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

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

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

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|---|---|---|---|
| **4.** | **20-20157-C-13 MJD-2** | **JOSE/JEANNETTE PAGTALUNAN Matthew DeCaminada** | **MOTION TO EXTEND AUTOMATIC STAY 1-28-20 [23]** |

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 28, 2020. By the court's calculation, 14 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.**

Jose Mari Padilla Pagtalunan and Jeannette Rojas Pagtalunan ("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. 18-21672) was dismissed on August 26, 2019, after Debtor fell delinquent in plan payments. *See* Order, Bankr. E.D. Cal. No. 18-21672, Dckt. 73, August 26, 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 after debtor and debtor's son both suffered significant health issues, resulting in increased expenses and decreased income.

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 rebutted the presumption of bad 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 Jose Mari Padilla Pagtalunan and Jeannette Rojas Pagtalunan ("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.

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**5.** **20-20164-C-13 MOH-1** **CAROL ANGLIN** **Michael Hays** **MOTION TO EXTEND AUTOMATIC STAY** **1-28-20 [15]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on January 28, 2020. By the court's calculation, 14 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.**

Carol Anglin ("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. 19-26911) was dismissed on November 25, 2019, after Debtor failed to timely file documents. *See* Order, Bankr. E.D. Cal. No. 19-26911, Dckt. 11, November 26, 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 receiving assistance from LA Legal, which helped her file a skeletal petition but did not further represent her or prosecute the case. Debtor has now retained bankruptcy counsel and filed a complete petition.

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 rebutted the presumption of bad 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 Carol Anglin ("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.

**6.** **17-23377-C-13** **BRIAN MAYS** **MOTION TO MODIFY PLAN**
**SS-1** **Scott Shumaker** **1-3-20 [53]**

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 3, 2020. By the court's calculation, 39 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

**The Motion to Confirm the Modified Plan is XXXXX**

The debtor, Brian Keith Mays ("Debtor") seeks confirmation of the Modified Plan, which delays a step-up in plan payments that was set to occur after Debtor's son graduates because the graduation was delayed. Declaration, Dckt. 55. The Modified Plan provides for $57,091.75 paid through December 2019, and payments of $1,213 for the remaining plan term. Modified Plan, Dckt. 57. 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 27, 2020. Dckt. 63. Trustee opposes confirmation on the following grounds:

1. Debtor is $13 delinquent under the plan.

2. The proposed modified plan indicates the claim of Capital One Auto Finance was paid in full, but the plan does not otherwise authorize payments already made under the plan.

3. The Debtor's Supplemental Schedule I and J were filed only as exhibits.

4. The court's order confirming the current plan required Debtor to pay into the plan annual bonuses, demonstrated through pay advices, which is not a specific requirement of the proposed modified plan. Debtor reduces the dividend to unsecured claims from 100% to 58%, where that percentage may be higher depending on the bonuses.

**DISCUSSION**

Debtor filed Supplemental Schedules I and J on February 6, 2020. Dckts. 66, 67. Aside from the modest delinquency in plan payments, it appears all the Trustee's other concerns can be addressed in the language of the order confirming the plan.

At the hearing, xxxxxxxxxxxxxx.

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, Brian Keith Mays ("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 XXXXXX.

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| **7.** | **19-27777-C-13**<br>**DPC-1** | **YVONNE RICHARDS**<br>**Peter Macaluso** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK**<br>**1-29-20 [31]** |

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

**Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the 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 29, 2020. By the court's calculation, 13 days' notice was provided. The court issued an order shortening the time required for notice to 13 days. Dckt. 36.

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's plan proposes valuing the secured claim of TD Auto Finance, but the court has not issued an order valuing that claim yet.

B. The claim of Chase Bank is listed as a Class 1 and Class 4.

C. Debtor has not provided a copy of Debtor's recent tax return.

D. The Trustee has requested and Debtor has yet to provide a copy of the revocable living trust listed on Schedule B.

**DISCUSSION**

Debtor's Plan proposes valuing the secured claim of TD Auto Finance. However, no motion has been filed seeking that relief. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

The plan lists the claim of Chase Bank is listed as a Class 1 and Class 4. That also shows the plan is not feasible.

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

Additionally, the Trustee has requested documentation for Debtor's trust. 11 U.S.C. § 521 requires the Debtor to cooperate with the Trustee. Debtor has not met that requirement of the Bankruptcy Code.

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.** **18-24079-C-13 MJD-6** **VALAREE ST. MARY** **Matthew DeCaminada** **MOTION TO MODIFY PLAN** **1-2-20 [133]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on January 2, 2020. By the court's calculation, 40 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 ~~granted.~~**

The debtor, Valaree Jade St. Mary ("Debtor") seeks confirmation of the Modified Plan to cure a delinquency in plan payments. Declaration, Dckt. 135. The Modified Plan provides for $1,741.00 paid through December 2019, and for payments of $135.00 commencing January 25, 2020, and continuing for the remainder of the plan term. Modified Plan, Dckt. 137. 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 27, 2020. Dckt. 143. Trustee opposes confirmation on the following grounds:

1. The plan proposes paying $1,741.00 through December 2019, and payments of $135.00 commencing January 25, 2019. Because January is the 19th month, the plan will run over 60 months.

2. Debtor is $135.00 delinquent in plan payments (though Trustee notes a

payment appears pending).

**DEBTOR'S REPLY**

The Debtor filed a Reply on February 3, 2020. Dckt. 146. The Reply proposes fixing the plan term through the language of the order confirming the plan. Debtor also notes a payment is in process.

**DISCUSSION**

At the hearing, Trustee reported whether Debtor is current in plan payments xxxxxxxxxxxxxx.

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

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

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

~~The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Valaree Jade St. Mary ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~**IT IS ORDERED** that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on January 2, 2020, 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.~~

**9.** **20-20390-C-13 DPR-1** **LANE/DENISE MILDE** **David Ritzinger** **MOTION TO EXTEND AUTOMATIC STAY** **1-27-20 [8]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on January 27, 2020. By the court's calculation, 15 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.**

Lane Christian Milde and Denise Rene Milde ("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. 19-21812) was dismissed on January 16, 2020, after Debtor fell delinquent $21,266.96 in plan payment. *See* Order, Bankr. E.D. Cal. No. 19-21812, Dckt. 32, January 16, 2020. 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.

**TRUSTEE'S RESPONSE**

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response on February 4, 2020, noting that not all assets have been disclosed in this case. Trustee held $15,244.84 on-hand at the time of filing this case, for which a check was issued January 31, 2020. Trustee believes these funds should be ordered paid into this case.

**DISCUSSION**

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because of several unexpected expenses and interruption to the regular income stream (explained fully in Debtor's Declaration (Dckt. 12)).

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 rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

Trustee's Response noting the extra funds is not indicative of bad faith and is more relevant to confirmation of any Chapter 13 Plan.

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 Lane Christian Milde and Denise Rene Milde ("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.

**10.** **17-22999-C-13** **SCOTT SHAW** **MOTION TO USE FUNDS TO BUY**
**DBJ-4** **Douglas Jacobs** **REAL PROPERTY**
**1-13-20 [54]**

**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 and the US Trustee on January 13, 2020. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion to Use Estate Funds has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered.

**The Motion to Use Estate Funds is granted.**

The debtor, Scott Shaw ("Debtor"), filed this Motion seeking authority pursuant to 11 U.S.C. § 363(b) to use $36,000.00 received as sale proceeds to purchase an interest in 7201 Sir William Drive, Fairview, Tennessee.

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response on January 27, 2020, indicating nonopposition, and noting that Debtor has exempted $56,820.00 from his property that was sold (meaning the $36,000 are exempt funds). Dckt. 59. Trustee also notes Debtor is delinquent in plan payments.

Based on the evidence provided, the use of funds is in the best interest of the Estate. Debtor already resides in the Tennessee property and reinvesting the sale proceed funds will help Debtor towards a fresh start and facilitate the plan payments.

The motion is granted.

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

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

The Motion for Allowance of Administrative Expense filed by Scott C. Shaw ("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 is authorized to use $36,000.0 from sale proceeds of real property known as 1595 Beaver Lane, Paradise, California, to purchase an interest in 7201 Sir William Drive, Fairview, Tennessee.

# FINAL RULINGS

| | | | |
|---|---|---|---|
| **11.** | **18-23897-C-13 PLG-2** | **RONALD GADREAULT Steven Alpert** | **CONTINUED MOTION TO MODIFY PLAN 12-17-19 [56]** |

**Final Ruling: No appearance at the February 11, 2020 hearing is required.**

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

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

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy 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).

**The Motion to Confirm is granted.**

The debtor, Ronald Wayne Gadreault ("Debtor") seeks confirmation of the Modified Plan to cure a plan payment delinquency. The Modified Plan provides for $20,436 paid through December 2019, and payments of $1,710 for the remaining plan term. Modified Plan, Dckt. 58. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

**CHAPTER 13 TRUSTEE'S OPPOSITION**

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on January 7, 2020. Dckt. 67. Trustee argues the plan was not filed in good faith because new deductions of $653.95 for mandatory and $193.72 for voluntary retirement contributions are made monthly where those deductions were previously at $0.00, where Debtor fell $8,000 delinquent under the prior plan, and where 0% is paid to unsecured claims. Trustee also notes several increased expenses, some of which not having been explained.

**DEBTOR'S REPLY**

Debtor filed a Reply on January 21, 2020, indicating Debtor suffered a stroke and is no longer working his second job with critical intervention. Dckt. 71. Debtor states amended schedules need to be filed, and requests a continuance of the hearing.

**DISCUSSION**

Trustee filed a Supplemental Response on February 6, 2020, indicating nonopposition to confirmation. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Ronald Wayne Gadreault ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on December 17, 2020, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

**12.** **16-25917-C-13** **JUNE KOGER** **MOTION TO MODIFY PLAN**
**PGM-4** **Peter Macaluso** **12-31-19 [129]**

**Final Ruling: No appearance at the February 11, 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 Chapter 13 Trustee, creditors, and Office of the United States Trustee on December 31, 2019. By the court's calculation, 41 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, June Durell Koger ("Debtor"), has filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response indicating non-opposition on January 28, 2020. Dckt. 135. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

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

**IT IS ORDERED** that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on December 31, 2020, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

**13.** **19-21759-C-13 DPR-2** **BRIAN/TRACEE STACY** **David Ritzinger** **MOTION TO MODIFY PLAN 1-6-20 [51]**

**DEBTOR DISMISSED: 01/23/20**

**Final Ruling: No appearance at the February 11, 2020 hearing is required.**
**----------**

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

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

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

The Motion To Confirm Modified Plan having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is dismissed as moot, the case having been dismissed

**14. 19-27625-C-13 AP-1** | **SVETLANA TISKIY** Pro Se | **OBJECTION TO CONFIRMATION OF PLAN BY CREDITOR U.S. BANK NATIONAL ASSOCIATION 1-28-20 [20]**

**THRU #16**

**Final Ruling: No appearance at the January 11, 2020 hearing is required.**

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Local Rule 9014-1(f)(2) Objection—No Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Chapter 13 Trustee, and US Trustee on January 28, 2020. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

Upon review of the Objection, supporting pleadings, and the files in this case, the Debtor filing an amended plan and is not pursuing the Plan that is the subject of this Objection, the court has determined that oral argument will not be of assistance in ruling on the Motion.

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

U.S. Bank National Association, as trustee ("Creditor") opposes confirmation of the Plan on the basis that:

A. The plan was not proposed in good faith because the plan significantly understates the prepetition arrearage and postpetition payment.

B. Because the prepetition arrearage and postpetition payment are not listed correctly, Creditor's claim is not provided for in full.

**DISCUSSION**

Debtor filed a Response (to the Trustee's Objection to Confirmation) on February 5, 2020. Dckt. 38. Debtor notes that the tax returns and 521 documents have been provided, and that a new plan has been filed to address feasibility concerns.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Debtor filed an Amended Plan. Dckts. 39. Filing a new plan is a *de facto* withdrawal of the pending plan. The Objection is sustained, and the plan is not confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Confirmation the Chapter 13 Plan filed by U.S. Bank National Association, as trustee ("Creditor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is sustained, and the proposed Chapter 13 Plan is not confirmed.

**15.** **19-27625-C-13 DPC-1** **SVETLANA TISKIY** **Pro Se** **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 1-29-20 [24]**

**Final Ruling: No appearance at the January 11, 2020 hearing is required.**

---

Local Rule 9014-1(f)(2) Objection—No Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor on January 29, 2020. By the court's calculation, 13 days' notice was provided. The court issued an order shortening the required notice to 13 days. Dckt. 33.

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

Upon review of the Objection, supporting pleadings, and the files in this case, the Debtor filing an amended plan and is not pursuing the Plan that is the subject of this Objection, the court has determined that oral argument will not be of assistance in ruling on the Motion.

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

The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on several grounds, including that the Debtor failed to attend the 341 Meeting; that Debtor is a serial filer; that Debtor has not provided tax returns and business documents required by 11 U.S.C. § 521; that an outdated plan form was filed; that the plan is by its own terms not feasible; that conflicting information is provided as to Debtor's marital status; and that the proposed plan payment does not commit all Debtor's disposable income.

Debtor filed a Response on February 5, 2020. Dckt. 38. Debtor notes that the tax returns and 521 documents have been provided, and that a new plan has been filed to address feasibility concerns.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Debtor filed an Amended Plan. Dckts. 39. Filing a new plan is a *de facto* withdrawal of the pending plan. The Objection is sustained, and the plan is not confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Confirmation the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause

appearing,

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

**16.** **19-27625-C-13 JCW-1** | **SVETLANA TISKIY** **Pro Se** | **OBJECTION TO CONFIRMATION OF PLAN BY CREDITOR WELLS FARGO BANK, N.A.** **1-30-20 [34]**

**Final Ruling: No appearance at the January 11, 2020 hearing is required.**

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Local Rule 9014-1(f)(2) Objection—No Hearing Required.

Sufficient Notice Not Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and the Chapter 13 Trustee on January 30, 2020. By the court's calculation, 12 days' notice was provided. 14 days' notice is required.

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

Upon review of the Objection, supporting pleadings, and the files in this case, the Debtor filing an amended plan and is not pursuing the Plan that is the subject of this Objection, the court has determined that oral argument will not be of assistance in ruling on the Motion.

**The Objection to Confirmation of Plan is overruled without prejudice.**

Wells Fargo Bank, N.A., as Trustee ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

A. The plan sates a prepetition arrearage, but provides no dividend to the arrearage.

B. The prepetition arrearage is grossly understated.

**DISCUSSION**

Debtor filed a Response (to the Trustee's Objection to Confirmation) on February 5, 2020. Dckt. 38. Debtor notes that the tax returns and 521 documents have been provided, and that a new plan has been filed to address feasibility concerns.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Debtor filed an Amended Plan. Dckts. 39. Filing a new plan is a *de facto* withdrawal of the pending plan. The Objection is sustained, and the plan is not confirmed.

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

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

The Objection to the Chapter 13 Plan filed by Wells Fargo Bank, N.A., as Trustee ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection is sustained, and the plan is not confirmed.