UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

February 11, 2020 at 3:00 p.m.

1.	**20-20302-E-13** **PGM-1**	**OMAR URCUYO** **Peter Macaluso**	**MOTION TO EXTEND AUTOMATIC STAY** **1-28-20 [13]**

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the 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, 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 xxxxx.

Omar Bermudez Urcuyo ("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. 19-23068) was

dismissed on November 5, 2019, after Debtor failed to obtain confirmation of an amended plan within 60 days of the date of entry of the order denying confirmation of the debtor's plan. *See* Order, Bankr. E.D. Cal. No. 19-23068, Dckt. 46, November 5, 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 the Plan he proposed was denied but was what he could afford at the time.

Debtor is self-employed and now is able to generate sufficient monies to perform the Chapter 13 plan that he has filed in this case.

Debtor testifies that he has suffered from a series of serious medical issues, total disability in 2015, and multiple losses of business in 2017 and 2018. Declaration, Dckt. 16. He further testifies that he is attempting these bankruptcy cases to save his home from foreclosure. He further testifies that to accomplish this he hopes to achieve a loan modification so he can pay a reasonable amount. *Id.*, ¶ 3.

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.

In the prior case, Debtor was represented by the same counsel as in this case. The prior case was before the Hon. Christopher D. Jaime. The Chapter 13 plan that Debtor and counsel filed in the prior case provided for monthly plan payments of $3,075 for thirty-six months and then a lump sum

(from no identified source) of $55,550, or some other unstated amounts as would be necessary to complete the plan. It appears that the $3,075 in monthly payments was to pay Debtor's counsel's fees, the trustee fees, and the current post-petition monthly payments due the creditor whose claim is secured by Debtor's residence.

The creditor and the Chapter 13 trustee in the prior case objected to confirmation of the proposed plan. The court denied confirmation, and afforded Debtor additional time to propose and prosecute an amended plan.

The prior bankruptcy case was filed on May 14, 2019, and dismissed on November 5, 2019 - one hundred seventy-five (175) days later.

The present case was filed on January 20, 2020. In the plan filed in this case, the treatment of the creditor's claim that is secured by Debtor's residence is stated as:

Section 7 - Nonstandard Provisions

> **Class 1 Creditor, Caliber Home Loans will be paid in full through a refinance or sale of the subject property on or before the 12th month of the plan.**
>
> Class 1 Creditor, Caliber Home Loans to receive $1,660.00 adequate protection payment until the property is refinanced or sold.

Chapter 13 Plan, p. 7; Dckt. 3.

This term is different from what Debtor states in his declaration:

> 3. Since my previous case was dismissed, my circumstances have changed. Hope to achieve loan modification that feed my budget and my quality to pay a reasonable amount.

Declaration, ¶ 3; Dckt. 16. The Debtor clearly states that his intention is to get a loan modification, not a sale or refinance.

On Schedule A/B Debtor lists the residence property, 864 Oak Lane, as having a value of $355,000. Dckt. 1 at 12. However, as part of the information concerning the Oak Lane Property, Debtor states under penalty of perjury on Schedule A/B that:

1. It is on previously cow manure land
2. Comps are $300,000
3. The Oak Lane Property is in very poor shape
4. The Oak Lane Property was appraised in 2019 for $225,000

Id.

On Schedule D, the creditor with the claim secured by the residence, which is described on Schedule d as "previous cow manure land," "house is very poor shape," and "appraised in 2019 for $225,000," is identified as Caliber Home Loans with a claim of ($708,593.57). *Id.* at 20. Even at Debtor's stated higher than the 2019 appraised value, there is almost $400,000 of negative equity for Debtor in the Property.

On Schedule I Debtor lists having income of $3,951.72 a month. *Id.* at 41-42. Of this, $951.72 is identified as disability, $2,000 net income from business, and $1,000 in "Family Assistance." *Id.* This provide Debtor with $3,951.72 in monthly income.

Debtor lists having two dependants (teenage children). *Id.* at 44. For his family of three persons, Debtor lists expenses of ($1,591.72) (which does not include rent/mortgage/property taxes/insurance). Debtor also has an expense of ($410.00) a month for alimony or support payments. *Id.* at 45.

Doing the math, Debtor purports to have $1,950.00 in monthly net income. *Id.*

On Schedule A/B Debtor does not list any businesses, expressly stating "no" under penalty of perjury in repose to the question whether he has any interests in any incorporated or unincorporated businesses. Schedule A/B Question 10; *Id.* at 14.

However, on the Statement of Financial Affairs Debtor states he had a business, Eagle Auto Sales, but that it ceased operation December 12, 2017. Statement of Financial Affairs Question 27, *Id.*

It is unclear what "business" Debtor has which generates him net income of $2,000 a month.

While it is clear that Debtor needs the bankruptcy to stop a foreclosure sale of his home, it is unclear what Debtor can do to prosecute this bankruptcy case. Even without paying a mortgage, property taxes, and insurance, Debtor has $950 a month in net monthly income (not including family support payments for an unidentified source).

If the property has a value of approximately $355,000 as stated under penalty of perjury on Schedule A/B in this case (and not the $225,000 as the referenced appraisal and what Debtor stated under penalty of perjury in his Schedules in the prior case) and Debtor could obtain a loan modification for the current value, a $355,000 loan, amortized over 30 years at 4% interest (though it is unlikely at a 100% loan to equity ration loan would have an interest rate as low as 4%), requires a monthly principal and interest payment of $1,694, well in excess of Debtor's $950 a month. That does not include property taxes and insurance.

At the hearing, Debtor's counsel explained **xxxxxxxxxx**

~~Debtor has/has not 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/denied, 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 Omar Bermudez Urcuyo ("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/denied, 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. **19-25716-E-13 TJW-1** **JOSEPHINE WRIGHT** **Timothy Walsh** **CONTINUED MOTION TO CONFIRM PLAN** **11-21-19 [38]**

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 November 21, 2019. By the court's calculation, 54 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 Plan is xxxxx.

The debtor, Josephine Wright ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for monthly plan payments of $415.00 for 60 months, and 100% percent dividend to unsecured claims totaling $11,852.00. Amended Plan, Dckt. 35. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on December 27, 2019. Dckt. 48. Trustee opposes on the basis that:

1. Debtor has failed to explain why the initial documents omitted debts and assets and why Debtor's plan has changed.

2. Debtor is delinquent in plan payments.

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

DISCUSSION

Good Faith

The Chapter 13 Trustee asserts that either the Plan or the Petition may not have been filed in good faith. The original plan proposed no less than 0% to unsecured claims. Further, Debtor originally scheduled assets of $14,400.00 and debt of $43,838.88. Debtor proposed to value a 2015 Nissan at $11,000.00 and pay it through the plan.

In the Amended Plan, Debtor proposes to pay 100% of unsecured claims. Debtor now lists assets of $43,028.24 and debt of $61,325.074. Moreover, Debtor proposes to surrender the 2015 Nissan but more importantly, Debtor now proposes to surrender a vehicle which was not previously disclosed—a 2016 Chevy Cruz; and to pay another vehicle, a 2006 Camry which had not been previously disclosed.

Debtor's declaration fails to explain why these two assets had not been previously disclosed. First, Debtor's declaration states that her plan payment is now $410.00 but the Plan filed states $415.00.

Furthermore, Debtor states that she will be able to make the $415 payments, instead of the original $235, because she no longer has to make a monthly payments of $77.00 to the clerk for filing fees. This still does not explain how she can pay $415.00, as $235.00 plus $77.00 totals $312.00. There is no explanation as to how Debtor can now pay 100% unsecured claims which total $11,852.00.

Moreover, a look at Debtor's Schedules, reveals other concerns. Schedule I states that Debtor has an income of $1,949.29 a month which comes from Social Security and a pension or retirement income. Dckt. 1. Schedule J states Debtor has expenses of $1,530.00. *Id.* Leaving her with $419.20 as her monthly net income. However, a close look at Schedule J shows no expenses in clothing or personal products. These are not realistic amounts.

Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable. Further, in light of Debtor having omitted two vehicles previously, concerns arise that Debtor may have more income or other assets which are being used "off the books" to maintain her lifestyle.

At the continued hearing, **xxxxxxxxxx**

Delinquency

The Chapter 13 Trustee asserts that Debtor is $681.00 delinquent in plan payments, which represents one months of the $415.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

At the continued hearing, **xxxxxxxxxx**

"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 continues to object to a "no look" fee in this case. Under the previously filed plan, Trustee opposed the "no look" fee on the basis that serious deficiencies existed in the plan, schedules, and statement of financial affairs. Objection to Confirmation, Dckt. 23. Thus, counsel's fees will be reviewed under the standard loadstar analysis.

At the continued hearing, **xxxxxxxxxx**

Supplemental Declaration

Debtor's attorney has provided his supplemental declaration, which has been filed under seal. No declaration is provided by the Debtor.

Upon review of counsel's declaration, he provides sufficient detail for this court to conclude that the inconsistencies in information provided was not conduct sufficient to result in bad faith sufficient to deny confirmation.

Debtor is also proceeding with a Chapter 13 Plan with a 100% dividend, so to the extent that others may be concerned as to her good faith, this 100% dividend sufficiently balances the equation.

3. 19-25324-E-13 PGM-2 — BETHANY SANDERS-JOHNSON — Peter Macaluso — MOTION TO CONFIRM PLAN — 1-7-20 [55]

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 January 7, 2020. 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 granted.

The debtor, Bethany Elaine Sanders-Johnson ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for monthly plan payments of $0.00 through December 2019, followed by $2,250.00 for 56 months beginning January 25, 2020, and a 100% dividend to unsecured claims totaling $39,111.58. Amended Plan, Dckt. 57. 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 27, 2020. Dckt. 62. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor is delinquent in plan payments.

B. There are inconsistencies between Debtor's Plan, Motion, and Declaration.

C. Plan is over-extended due to total filed unsecured claims and dividend proposed to a Class 2(A) claim.

D. Debtor failed to estimate the amount of creditor's post-petition arrearage.

E. Debtor states incorrect total amount paid into the Plan.

DEBTOR'S REPLY

Debtor filed a Reply on February 4, 2020. Dckt. 65. Debtor responses are analyzed below.

DISCUSSION

Trustee's concerns are well taken.

Delinquency

The Chapter 13 Trustee asserts that Debtor is $30.00 delinquent in plan payments, which represents a portion of the $2,250.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

In her Reply, Debtor states that she will be current prior to the hearing on this matter.

Failure to Afford Plan Payment

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Plan may not be feasible on the basis that Debtor proposes to pay 100% dividend to unsecured claims yet the actual claim filed are $35,193.92 over the amount estimated by Debtor. Additionally, Debtor proposes to pay $18,180.18 to Creditor Exeter Finance LLC with a 7% interest and monthly dividend of $330.00. The monthly divi9dend would need to be approximately $390.00 to complete in the remaining 56 months of the Plan. Finally, Debtor failed to account for the amount of post-petition arrearage owed to Creditor Freedom Mortgage Corporation for the four months of non-payment.

Debtor argues that the Plan is not over-extended because Trustee improperly calculated the nonpriority unsecured claims using the $34,640.28 claim from the Department of Housing and Urban Development, a loan not due and payable until June 1, 2044. Deducting this claim from the nonpriority unsecured claims results in a total of $39,655.22 and thus the plan is feasible.

This claim is provided for as a Class 4 claim secured claim.

However, Debtor agrees with Trustee's concerns regarding Creditor Exeter and agrees to increase Exeter Finance's monthly dividend to $390.00 as well as increase the plan payment in order to account for the increased dividend.

Additionally, Debtor requests that the order confirming the Plan state that post-petition arrearage owed to Freedom Mortgage Corporation on the first deed is $4,522.48, or four payments. Additionally, that post-petition arrearage owed to the same creditor on the second deed of trust is $324.00, or four payments.

Inconsistencies between Filed Documents

Debtor's plan calls for payments of $0.00 through December 2020, then $2,250.00 for **56** months. Dckt. 57. For this term, the Motion states Debtors will make plan payments of $2,250.00 commencing **January 25, 2020** for **60** months. Dckt. 55. The Declaration in turn states Debtor will be making payments starting **February 25, 2020. Dckt. 58**. The court is uncertain as to when Debtor will begin making payments and as to the total length of the Plan.

Finally, Trustee also clarifies that Debtor has paid in a total of $2,200.00 into the Plan and not $2,230.00 as stated in Debtor's Declaration. Dckt. 58.

As to these concerns, Debtor asserts that the Additional Provision can be clarified by the court's order to read as follows:

1. "$0.00 paid through December 2019, with monthly plan payments of $2,250.00 for 56 months beginning January 25, 2020."

2. Debtor will commence payments in January 2020 and continue for 60 months.

3. Debtor has commenced plan payments.

The Amended Plan does comply 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 Amended Chapter 13 Plan filed by the debtor, Bethany Elaine Sanders-Johnson ("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 granted with the following clarifications:
>
> 1. "$0.00 paid through December 2019, with monthly plan payments of $2,250.00 for 56 months beginning January 25, 2020."
>
> 2. Debtor has commenced plan payments.
>
> 3. Debtor will increase Exeter Finance's monthly dividend to $390.00 as well as increase the plan payment in order to account for the increased

dividend.

4. Post-petition arrearage owed to Freedom Mortgage Corporation on the first deed is $4,522.48, or four payments.

5. Post-petition arrearage owed to Freedom Mortgage Corporation on the second deed of trust is $324.00, or four payments.

No other relief is granted.

4. **19-21026-E-13** **LISA MOORE** **MOTION TO CONFIRM PLAN**
SLE-4 **Steele Lanphier** **12-23-19 [72]**

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 23, 2019. By the court's calculation, 50 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is xxxxx.

The debtor, Lisa Lynn Moore ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for monthly plan payments of $710.00 for 60 months and a 15% dividend for unsecured claims totaling $22,678.00. Amended Plan, Dckt. 76. 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 27, 2020. Dckt. 91. Trustee opposes confirmation of the Plan on the basis that:

A. The claims of Specialized Loan Servicing is $6,874.73 in default, and thus should be a Class 1 and not a Class 4.

B. Debtor's plan contains a typographical error in the Non-Standard Provision of $6,3*0.00.

CREDITOR'S OPPOSITION

Federal Home Loan Mortgage Corporation, as Trustee for the benefit of the Freddie Mac Seasoned Loans Structured Transaction Trust, Series 2019-3 ("Creditor") holding a secured claim, filed an Opposition on January 27, 2020. Dckt. 94. Creditor opposes confirmation of the Plan on the basis that:

A. Debtor's plan fails to provide for Creditor's full claim– $6,874.73 in arrearage.

B. Debtor's Plan is not proposed in good faith because Debtor continues to file the same defective plan.

DISCUSSION

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

Creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts $6,874.73 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.

As Creditor points out, this is Debtor's third amended plan including the same defective class term. Debtor's case was filed February 2019, and no plan has been confirmed. The last two being denied for failure to address Creditor's claim. (Dckts. 45 and 64). The court is concerned that Debtor did not propose this Plan in good faith. See 11 U.S.C.§1325(a)(3). As such, it cannot confirm the Plan.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Lisa Lynn Moore ("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.

5.	**19-27838-E-13 DPC-1**	**TIAZJANAE WILRIDGE Peter Cianchetta**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 1-29-20 [11]**

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the 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. 14 days' notice is required.

The court entered an Order granting Trustee's Motion to Shorten Time on January 30, 2020, requiring only thirteen days notice. Dckt. 16.

The Objection to Confirmation of Plan has not been 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 denied.

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 is no longer employed.

C. Debtor failed to file Motion to Value a Secured Claim

D. Debtor failed to file Form EDC 3-096, an executed Rights and Responsibilities of Chapter 13 Debtors and their Attorneys.

DISCUSSION

Trustee's objections are well-taken.

Delinquency

Debtor is $318.16 delinquent in plan payments, which represents one month of the $318.16 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).

Debtor's Reliance on Motion to Value Secured Claim

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of Santander Consumer USA. Debtor has failed to file a Motion to Value the Secured Claim of Santander Consumer USA, however. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

Failure to Afford Plan Payment / Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). According to Trustee, Debtor admitted at the First Meeting of Creditor that she is no longer employed. 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.

6.	**19-27754-E-13 DPC-1**	**ROGER/SHELLEY SAMPSON David Ritzinger**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 1-21-20 [13]**

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the 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 21, 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. It is not clear if the Power of Attorney filed includes the power to file the present bankruptcy case.

B. Debtor failed to file tax returns.

C. Expense listed on Schedule J might not be accurate.

Debtor filed a Motion to Dismiss the Case on February 3, 2020. Dckt. 17. Debtor requests dismissal under 11 U.S.C. § 1307(b) which provides that a debtor may request dismissal at any time if case has not been converted.

DISCUSSION

Trustee's objections are well-taken.

Power of Attorney

Debtor's Petition includes a "Springing Durable General Power of Attorney." Petition, at 10. Trustee is concerned whether such power extends to filing this bankruptcy. The Power of Attorney includes an exception on page 12 that reads as follows:

> Attorney shall not have the power to undertake the following acts on behalf of Principal:
>
> [. . .]
>
> 7. Exercise any power in any way to discharge any legal obligation that Attorney may have.

Petition, at 12.

Trustee also raises concerns of whether Debtor has reviewed and signed the bankruptcy documents. Trustee's request for clarification with a Declaration from Debtor stating that he has reviewed the documents and either agrees with documents as filed or lists any corrections needed is not unreasonable.

Failure to File Tax Returns

The Internal Revenue Service filed a claim for the 2016 tax year. Proof of Claim 8. Filing of the return is required. 11 U.S.C. §§ 1308, 1325(a)(9). Failure to file a tax return is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Schedule J Expense

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor's Schedule J lists an monthly expense of $1,358.37 in real estate taxes. According to Trustee, Debtor admitted at the meeting of Creditors that the annual real property taxes for their residence is approximately $9,004.00 or $750.33 per month, a difference of $608.04 per month. 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.

7.	**19-27761-E-13** **DPC-3**	**WILLIAM ANDERSON** **Peter Cianchetta**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **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 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 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. 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 might not to be able to afford the Plan.

C. Debtor failed to provide pay advices.

D. Debtor failed to file Spousal Waiver form for claimed exemptions.

E. Debtor's counsel failed to file The Statement of Rights and Responsibilities of Chapter 13 Debtors and Their Attorney.

DISCUSSION

Trustee's objections are well-taken.

Delinquency

Debtor is $2,382.24 delinquent in plan payments, which represents one month of the $2,382.24 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Failure to Afford Plan Payment

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). The expenses listed on Debtor's Schedule J for a family of six, with an unemployed spouse, are not realistic. For example, Debtor lists only $25.00 for clothing, $25.00 for entertainment, and $25.00 for personal care products, among others. Additionally, Debtor makes bi-weekly payments of $58.17 to a retirement loan. Trustee also points out that the pay advice provided for November 2019, seems to indicate an "ARSP LOAN" in the amount of $332.51 is being withdrawn. It is unclear how many retirement loans Debtor is repaying. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Failure to Provide Pay Stubs

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). While Debtor provided one pay stub, Debtor has failed to provide all necessary pay stubs. That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Spousal Waiver

Debtor claims exemptions pursuant to California Code of Civil Procedure section 703.140(b). That section requires that, if a married person is filing individually, the spouses execute a written waiver. Debtor here has not filed a spousal waiver. Because Debtor is not entitled to the claimed exemptions, the Plan does not provide unsecured claims at least as much as they would receive in a Chapter 7 case. 11 U.S.C. § 1325(a)(4).

Attorney Fees

Debtor's Plan indicates that attorney is accepting a fee of $4,000.00, of which $3,850.00 will be paid through the Plan, pursuant to LBR 2016-1(c). However, no Statement of Rights and Responsibilities of Chapter 13 Debtors and Their Attorney has yet to be filed. This is a required document and thus Debtor must file it before any attorney payments can be made.

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.	**19-22167-E-13** **SLE-4**	**VICKY SAAVEDRA** **Steele Lanphier**	**OBJECTION TO CLAIM OF INTERNAL REVENUE SERVICE, CLAIM NO. 4** **12-11-19 [58]**

The Court Has Set This As A Tentative Ruling To Afford Counsel For Debtor An Opportunity To Address Any Misunderstanding Of The Objection and Amended Proof of Claim 4-3

Appearance of Counsel For Debtor Is Not Required If Counsel Concurs With The Court's Tentative Ruling

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

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

Below is the court's tentative ruling.

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

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Chapter 13 Trustee, and Office of the United States Trustee on December 11, 2019. By the court's calculation, 62 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 4 of Internal Revenue Service is sustained.

Vicky Lou Saavedra, Chapter 13 Debtor, ("Objector") requests that the court disallow the claim of Internal Revenue Service ("Creditor"), Proof of Claim No. 4-2 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $10,103.59, which represents $9,484.82 in priority debt and $618.77 in general unsecured non-priority debt.. Objector asserts that the actual priority amounts owed are $3,449.00, plus applicable interest, which Debtor estimates total approximately $150.00, for a sum total of $3,499.00 in priority debt.

DISCUSSION

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial evidence to overcome the prima facie validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and requires financial information and factual arguments. *In re Austin,* 583 B.R. 480, 483 (B.A.P. 8th Cir. 2018). Notwithstanding the prima facie validity of a proof of claim, the ultimate burden of persuasion is always on the claimant. *In re Holm*, 931 F.2d at p. 623.

Once a party has objected to a proof of claim, the creditor asserting the claim may not withdraw the claim except on order of the court. FED. R. BANKR. P. 3006.

Internal Revenue Service Proof of Claim 4-1 lists three unsecured priority claims:

1.	2016 tax year	$843.00	$90.93
2.	2017 tax year	$1,053.00	$55.89
3.	**2018 tax year**	**$7,442.00**	**$0.00**

(Emphasis added.)

The Claim includes a note stating that the 2018 tax year liability is an estimate as Debtor had not yet filed her tax return. Debtor comes now and states that she has filed her 2018 tax return and her liability is actually $1,533.00. Therefore, Debtor argues the remaining $5,909.00 should be disallowed. (Debtor concedes the IRS amounts for tax years 2016 and 2017 totaling $1,916.00.)

The court turns to Debtor's declaration and exhibits. Debtor testifies under penalty of perjury that she filed her tax return and includes a properly authenticated copy of the 2018 tax return as Exhibit

B. The 2018 return is dated October 15, 2019 with a liability amount of $1,533.00. She further testifies that after filing she has not received any communication from the IRS rejecting the 2018 tax returns.

Debtor objects to the portion of the IRS claim that exceeds the total sum of $3,499.00, including the 2016 and 2017 tax years.

On December 16, 2019, the IRS filed an Amended Proof of Claim. The Amended Internal Revenue Service Proof of Claim 4-3 lists three unsecured priority claims:

1.	2016 tax year	$843.00	$90.93
2.	2017 tax year	$1,053.00	$55.89
3.	**2018 tax year**	**$1,495.00**	**$0.00**
	Total Amount of Unsecured Priority Claims:		$3,537.82

(Emphasis added.) The IRS's amended proof of claim accounts for Debtor's recently filed 2018 return and adjusts the total tax due for 2018 to $1,495.00.

Based on the evidence before the court, the Objection to the Proof of Claim is sustained, and the Internal Revenue Service is authorized to file Amended Proof of Claim which is consistent with this Objection.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Internal Revenue Service ("Creditor"), filed in this case by Vicky Lou Saavedra, Chapter 13 Debtor, ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Proof of Claim Number 4 of Creditor is sustained.
>
> **IT IS FURTHER ORDERED** that Internal Revenue Service is authorized to file Amended Proof of Claim 4-3, which was filed after the present Objection was filed, which Amended Claim 4-3 is consistent with the Debtor's Objection.

9. 19-22167-E-13 SLE-5 — VICKY SAAVEDRA — Steele Lanphier — MOTION TO MODIFY PLAN — 12-11-19 [63]

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 11, 2019. By the court's calculation, 62 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is granted.

The debtor, Vicky Lou Saavedra ("Debtor") seeks confirmation of the Modified Plan to lower her payments due to additional expenses and an increase in other expenses that have made it difficult for her to make the plan payments. Declaration, Dckt. 66. The Modified Plan provides for monthly plan payments of $215.00 beginning December 2019 for 24 months, with a 0.00% dividend to unsecured claims totaling $109,649.11. Modified Plan, Dckt. 65. 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. 65. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor filed Schedules I and J as exhibits only.

DISCUSSION

In support of Debtor's Plan, Debtor filed Schedules I and J as Exhibit A. Debtor had failed to file them as Supplemental/Amended Schedules. Debtor corrected this on February 4, 2020. Dckt. 77.

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, Vicky Lou Saavedra ("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 11, 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.

10. 18-23379-E-13 GW-7 | **WILLIAM BATTILANA, II** | **Gerald White** | **MOTION TO APPROVE STIPULATION TO SETTLE CLAIM NO. 12 OF JILLIAN BATTILANA**
1-8-20 [175]

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 8, 2020. By the court's calculation, 34 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

With respect to the short notice given, at the hearing, Counsel for Debtor **xxxxxxxxxx**

The Motion for Approval of Compromise 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 for Approval of Compromise is xxxxx.

William Rudolph Battilana, II, Chapter 13 Debtor, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Jillian Battilana, II c/o Sagaria Law, PC ("Settlor"). The claims and disputes to be resolved by the proposed settlement are Settlor's Claim No. 12 for attorney's fees and monetary sanctions totaling $163,500.00 related to a dissolution proceeding pending in state court.

INSUFFICIENT NOTICE OF MOTION

Debtor provided 34 days' notice of this Motion. Federal Rule of Bankruptcy Procedure 2002(a)(6) requires a minimum of twenty-one days' notice of the hearing, and Local Bankruptcy Rule 9014-1(f)(1)(B) requires an additional fourteen days for parties to file written opposition. Those time periods do not run concurrently. Those two minimums total thirty-five days. Movant has provided one (1) fewer day than the minimum.

Therefore, the Motion may properly be denied without prejudice due to lack of proper notice.

REVIEW OF MOTION

Movant and Settlor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed in support of the Motion, Dckt. 178):

A. Debtor has two possible claims against Settlor totaling $29,000.00.

B. One of them is listed as Item 33 in Debtor's Schedule A/B for recovery of $9,000 reimbursement of early distribution of community property paid from separate funds.

C. The second possible claim is listed as Item 35 in, also in Debtor' Schedule A/B, for $20,000.00 in ex-wife's attorney's trust account paid by Debtor per state court order.

D. Parties agree to reduce Claim No. 12 by $20,000.00.

E. Claim No. 12 is reduced to $142,000.00.

F. In exchange Debtor releases any right to the $20,000.00 held by Settlor's attorney and any right to recover the $9,000.00 paid to Settlor as an early distribution of community property.

DISCUSSION

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Constr.)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Comm. for Indep. S'holders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424–25 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

3. The complexity of the litigation involved and the expense, inconvenience, and delay necessarily attending it; and

4. The paramount interest of the creditors and a proper deference to their reasonable views.

In re A & C Props., 784 F.2d 1377, 1381 (9th Cir. 1986); *see also In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

Review of Minimum Pleading Requirements for a Motion

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

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

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

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

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

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

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

The courts of appeals agree. The Tenth Circuit Court of Appeals rejected an objection filed by a party to the form of a proposed order as being a motion. *St. Paul Fire & Marine Ins. Co. v.*

Continental Casualty Co., 684 F.2d 691, 693 (10th Cir. 1982). The Seventh Circuit Court of Appeals refused to allow a party to use a memorandum to fulfill the pleading with particularity requirement in a motion, stating:

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

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

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

Grounds Stated With Particularity For The Court To Consider

Debtor's Motion is devoid of any grounds for this court to grant this motion– no grounds are stated as to how this is beneficial to the estate or the effect it would have upon creditors is presented.

Indeed, the Motion is one page of which the caption takes half a page and the rest are three sentences. The totality of grounds stated by Debtor:

> Debtor, William Battilana, through his attorney, Gerald L. White, hereby requests approval of the Stipulation to Settle Claim No. 12 of Jillian Battilana. The Stipulation is filed herewith and a copy of Claim No. 12 is filed herewith as Exhibit A.
>
> **WHEREFORE**, movant requests an order granting this motion approving the Stipulation to Settle Claim No. 12 of Jillian Battilana, and further:
> 1. For such other relief as the Court deems just and proper.

Motion, Dckt. 175.

As the court reads the Motion, the grounds are -"The Debtor Wants It."

There is nothing for the court to try and stretch to create the appearance that grounds were stated as required by the Federal Rules of Bankruptcy Procedure.

Further, no evidence is provided for the court to make the necessary findings and conclusions for such a settlement may be approved.

The lack of any stated grounds, explanation as to why the Debtor is agreeing to allow his "ex" such a large claim may cause some to wonder if mischief is afoot. As many attorneys learn, which ex's can be locked in a litigation death spiral of divorce, unable to agree on anything, the one thing they can agree on is structuring their divorce to divert money from creditors and improperly benefit one of the ex's to the benefit of the other ex.

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

The court generally declines an opportunity to do associate attorney work and assemble motions for parties.

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 Approve Compromise filed by William Rudolph Battilana, II, 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 to Approve Compromise is denied without prejudice.

11. 18-21488-E-13 CLH-5 — DANIEL/ALLISON BRENNAN — Charles Hastings — CONTINUED MOTION TO MODIFY PLAN — 12-3-19 [154]

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 3, 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). 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 Modify Plan is granted.

The debtor, Daniel Lawrence Brennan and Allison Lyn Brennan ("Debtor") seek confirmation of the Modified Plan to extend the time to sell Debtor's residence by four months to allow a reasonably sufficient time period for marketing and sale of their residence. Declaration, Dckt. 157 at p. 2:22-24. Declaration, Dckt. 157. The Modified Plan provides for the following: payments of $0.00 for 1 month, $5,000.00 per month for 13 months, the $5,450.00 per month for 24 months, $6,000.00 per month for 12 months, $6,550.00 per month for 10 months, and a $359,000.00 lump sum payment in month 18; and a 100% percent dividend to unsecured claims totaling $42,464.88. Modified Plan, Dckt. 156. 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 December 17, 2019. Dckt. 159.

DISCUSSION

Delinquency

The Chapter 13 Trustee asserts that Debtor is $5,450.00 delinquent in plan payments, which represents one month of the $5,450.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

However, Trustee states that there is a pending transaction dated December 16, 2019 on the TFS for $5,450.00. If this payment goes through Debtor will be current on the November payment.

Supplemental Schedules I and J

Trustee requests that Debtors file updated Schedules I and J. Debtor's last Schedules I and J were filed March 14, 2018. Debtor's moved from California to Arizona according to a Change of Address filed on August 9, 2019. Dckt. 148. Indeed, their Third Modified Plan filed last June 18, 2019 expressly stated Debtor would file updated Schedules I and J but none were filed. Thus, Trustee's request is not an unreasonable request. Debtor should file Supplemental Schedules I and J.

Failure to Complete Plan Within Allotted Time

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. Trustee's calculations show that the plan payment will result in the Plan completing in 73 months. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

In the Motion to Confirm, counsel for Debtor lays out a series of events which have derailed what would be an otherwise diligently prosecuted sale as required under the confirmed Third Modified Amended Plan.

The court continued the hearing to allow Debtor and the Chapter 13 Trustee to finalize terms for the Debtor to be marketing and selling the property in Spring 2020.

Employment of Realtor

The Debtor has obtained court authorization to employ JaCi Wallace, or RE/MAX Gold as their Realtor to market and sell the property.

~~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 Brennan and Allison Lyn Brennan ("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 3, 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.

12. 19-27691-E-13 DPC-1 | **DANIEL CERVANTES** / **Peter Macaluso** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK** / **1-23-20 [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 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.

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

A. Debtor failed to appear at the First Meeting of Creditors.

B. Debtor failed to provide tax returns.

C. Debtor failed to report a current domestic support obligation expense on either Schedule I (if withheld by the employer) or J.

D. Plan may not be Debtor's best efforts to pay all disposable income towards the Plan.

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).

Trustee has continued the Meeting to February 27, 2020 at 12:00pm.

Failure to Provide Tax Returns

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

Failure to Report Current Domestic Support Obligation

A debtor shall file a schedule of current income and current expenditures.11 U.S.C. § 521 (a)(1)(B)(ii). According to Trustee, Debtor's Domestic Support Obligation Checklist provided by Debtor shows a withholding of $23.07 per pay period. Neither Schedule I nor Schedule J reports this current domestic support obligation expense. The information is needed to ensure the payment is accounted for in the Plan.

Failure to Provide Disposable Income / Not Best Effort

As another basis for denial of confirmation, the Trustee alleges that the Plan violates 11 U.S.C. § 1325(b)(1), which provides:

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

Debtor's Statement of Financial Affairs and Schedule I are silent as to any income from his non-filing spouse. Income may be understated and Debtor may have additional disposable income to pay toward the Plan.

Debtor's Schedule I does not merely fail to disclose the income information, but Debtor affirmatively states that he does not have to provide such information. On Schedule I Debtor does not list $0, but states under penalty of perjury "N/A," which is commonly known to be non-applicable.

At the hearing, Debtor's counsel explained the legal basis (subject to the Federal Rule of

Bankruptcy Procedure 9011 certifications) the Debtor and counsel have for stating that the requirement to state Debtor spouse's income is "not applicable" and what good faith basis has for stating such under penalty of perjury. Debtor's counsel stated **xxxxxxxxxx**

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.

13.	**19-27811-E-13 DPC-1**	**JOSE/ALICIA SANTANA Mikalah R. Liviakis**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK O.S.T. 1-30-20 [19]**

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

With respect to the short notice given, the court entered an Order granting Trustee's Motion to Shorten Time on January 30, 2020. Dckt. 26.

The Objection to Confirmation of Plan was not 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 payments because income amounts may not be accurate.

DISCUSSION

Trustee's objections are well-taken.

Failure to Afford Plan Payment

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor's Schedule I reflects income from social security, rent from a business lease, part-time work, babysitting, and support from a daughter.

According to a Notice of Related Case filed on January 28, 2020, Dckt. 17, this daughter, who provides Debtor with income support, is going through a bankruptcy herself. It also seems that she is the tenant in Debtor's property. Trustee is not certain if the amounts provided in the current case for the income are accurate. Furthermore, Trustee has not seen a written business lease for the restaurant space used by Debtor's daughter. 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. §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.

14. **19-26029-E-13 PGM-1** **DEBRA THOMPSON** **CONTINUED MOTION TO CONFIRM PLAN**
12-13-19 [41]

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

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

Below is the court's tentative ruling.

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

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

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

The Motion to Confirm is xxxxx.

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 Chapter13 Plan" on January 14, 2020. Dckt. 78. The filing of such "Objection" is not proper as the Debtor has filed and a Motion to Confirm an Amended Chapter 13 Plan. Under the Local Bankruptcy Rules, an "Objection to Confirmation" is properly filed only as to the first Chapter 13 plan filed by a debtor if such plan is timely filed that it could be confirmed without a hearing if nobody objects.

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

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

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

A. Debtor is delinquent in plan payments.

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

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

Delinquency

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

Interest Rate

Creditor Westlake objects to the confirmation of the Plan on the basis that the Plan calls for adjusting the interest rate on its loan with Debtor to 6.00%. Creditor Westlake's claim is secured by a

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

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

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

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

3. The Vehicle is a rapidly depreciating asset.

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

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

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

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

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

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

Reasonable, Good Faith Interest Rate

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

plus model year old, rapidly depreciating vehicle.

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

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

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

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

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

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 before buying the 27.99% interest rate contract and saw that Debtor was struggling though multiple unsuccessful bankruptcy cases.

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

DISCUSSION

Delinquency

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

~~The Plan complies with 11 U.S.C. §§ 1322 and 1325, and is confirmed.~~

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

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

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

~~**IT IS ORDERED** that the Motion is granted, and Debtor's Modified 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.~~

15. 19-26029-E-13 RDW-1 **DEBRA THOMPSON**

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION
12-2-19 [31]

PERITUS PORTFOLIO SERVICES II, LLC VS.

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

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

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

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

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

The Motion for Relief from the Automatic Stay is xxxxx.

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

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

Movant has also provided a copy of the NADA Valuation Report for the Vehicle. The Report has been properly authenticated and is accepted as a market report or commercial publication

generally relied on by the public or by persons in the automobile sale business. FED. R. EVID. 803(17).

DISCUSSION

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

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

Debtor is listed as the buyer of the vehicle.

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

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

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

In review 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

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.

16. 18-24856-E-13 PGM-2 EVANGELINA CLARIZA

CONTINUED MOTION TO MODIFY PLAN
12-30-19 [66]

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 xxxxx.

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 though 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 be 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 Debtor amended the plan to provide for the $375.00 for 45 months.

17. 14-31188-E-13 KATHIE SINKFIELD - WILLIS MOTION TO REFINANCE
2-4-20 [57]

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)(3) 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, and Office of the United States Trustee on February 5, 2020. By the court's calculation, 6 days' notice was provided. The court set the hearing for February 11, 2020. Dckt. 58.

The Motion to Incur Debt was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). 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 Incur Debt is granted.

Kathie Sinkfield - Willis ("Debtor") seeks permission to refinance the real property commonly known as 3336 Zalema Way, Sacramento, California, with a total purchase price of $295,482.00 and monthly payments of $1,368.43 to Embrace Home Loans over 30 years with a 3.75% fixed interest rate. Debtor estimates $17,000.00 in surplus funds after payment of Creditor Cooper's mortgage and costs of sale.

Trustee filed a Response on February 6, 2020. Dckt. 60. Trustee states that Debtor made her last payment on December 3, 2019, and Trustee issued final checks under the plan on December 31, 2019. A discharge should follow once all checks have cleared. The Confirmed plan is completed and unsecured claims were paid a dividend of 0.53%, including the claim of Schools Financial Credit Union ("Creditor"), which had their claim secured by a home equity line of credit in Debtor's house. Trustee is not certain if Creditor will consent to the refinance where surplus of funds exist.

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c)

requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." FED. R. BANKR. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

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

The 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 Incur Debt filed by Kathie Sinkfield - Willis ("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 Kathie Sinkfield - Willis is authorized to incur debt pursuant to the terms of the agreement as summarized in the attachments to the Motion; Dckt. 57, pages 6-9.

FINAL RULINGS

18.	**19-26906-E-13** **BLG-1**	**JEFFERY TAGGART** **Chad Johnson**	**MOTION TO VALUE COLLATERAL OF EXETER FINANCE LLC** **1-9-20 [25]**

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 Chapter13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on January 9, 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 Exeter Finance LLC ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $12,147.00.

The Motion filed by Jeffery Scott Taggart ("Debtor") to value the secured claim of Exeter Finance LLC ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 27. Debtor is the owner of a 2015 Buick Regal ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $12,147.00 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 April, 2017, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $23,258.50. Declaration, Dckt. 27. 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 $12,147.00, 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 Jeffery Scott Taggart ("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 Exeter Finance LLC ("Creditor") secured by an asset described as 2015 Buick Regal ("Vehicle") is determined to be a secured claim in the amount of $12,147.00, 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 $12,147.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

19. **15-22829-E-13 MJD-3** | **DANIEL/MALIA PALU**
Kyle Schumacher
Matthew Decaminada | **MOTION TO WAIVE SECTION 1328 CERTIFICATE REQUIREMENT, CONTINUE CASE ADMINISTRATION, SUBSTITUTE PARTY, AS TO DEBTOR**
1-3-20 [76]

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 Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 3, 2020. By the court's calculation, 39 days' notice was provided. 28 days' notice is required.

The Motion to Waive Section 1328 Certificate Requirement, Continue Case Administration, and Substitute Party 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 Waive Section 1328 Certificate Requirement, Continue Case Administration, and Substitute Party is granted.

Malia Siaki Palu ("Debtor") has filed a Notice of Death of her co-debtor husband, Daniel Palu. Dckt. 76. She also requests that she be appointed the Representative for the deceased co-debtor as provided in Federal Rule of Civil Procedure 25 and Federal Rules of Bankruptcy Procedure 7025 and 9014; and further that the court order that this bankruptcy case continue pursuant to Federal Rule of Bankruptcy Procedure 1016 and Local Bankruptcy Rule 1016-1(b) for both debtor's, with the co-debtor being succeeded by the personal representative.

The Chapter 13 Trustee does not oppose this Motion, noting that supplemental schedules I and J have been filed, as well as Debtor's declaration (Dckt. 92) explaining the current status of the case.

Debtor, as the surviving spouse of the deceased co-debtor is an appropriate person to serve as the personal representative for the deceased debtor in this case.

Based on the Supplemental Schedules I and J, and the Declaration of the Debtor, the court concludes that the further administration of this bankruptcy case is possible and in the best interest of the parties. Therefore, the case shall proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred. Fed. R. Bankr. P. 1016.

With respect to the requested waiver of the 11 U.S.C. § 1328 certifications required for the deceased co-debtor, Malia Siaki Palu, as the personal representative of the deceased co-debtor.

The Motion is granted, except with respect to the request for the waiver of the 11 U.S.C. § 1328 certifications for the co-debtor.

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 Substitution of Successor for Deceased Debtor and other relief filed by Malia Siaki Palu, the surviving debtor in this case 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 Malia Siaki Palu, the debtor in this case, is appointed as the personal representative for the late Daniel Kaikava Palu, her deceased co-debtor in this case, pursuant to Federal Rule of Civil Procedure 25 and Federal Rules of Bankruptcy Procedure 7025 and 9014 for all purposes.
>
> **IT IS FURTHER ORDERED** that this Chapter 13 case shall continue in full force and effect for both Malia Siaki Palu and Daniel Kaikava Palu, the deceased co-debtor for which the personal representative has been appointed.
>
> **IT IS FURTHER ORDERED** that the request for the waiver of the 11 U.S.C. § 1328 certifications for deceased co-debtor Daniel Kaikava Palu is denied without prejudice, with such certifications to be provided by the personal representative appointed for him.

20. 19-21331-E-13 GARY VASQUEZ MOTION TO MODIFY PLAN
DEF-3 David Foyil 12-19-19 [58]

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 19, 2019. By the court's calculation, 54 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Gary Joseph Vasquez ("Debtor") has provided evidence in support of confirmation. The Trustee filed a Response indicating non-opposition on January 28, 2020. Dckt. 68. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Gary Joseph Vasquez ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and Debtor's Amended Chapter 13 Plan filed on December 19, 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.

21. 19-24838-E-13 PGM-1 — TERESA/STEVEN GONSALVES — Peter Macaluso — MOTION TO CONFIRM PLAN — 1-2-20 [44]

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

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 January 2, 2020. By the court's calculation, 40 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 the Amended Plan is continued to 3:00 p.m. on March 31, 2020.

Debtor shall file and set for hearing at the same date and time a motion for allowance and allocation of fixed attorneys' fees in this case between Debtor's prior counsel and current counsel.

The debtor, Teresa Marie Gonsalves and Steven Michael Gonsalves ("Debtor"), seek confirmation of the Amended Plan. The Amended Plan provides for monthly Plan payments of $1,875.00 commencing on January 25, 2020 for 55 months, and a 0.0% dividend for unsecured claims totaling $160,459.25. Amended Plan, Dckt. 48. 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 28, 2020. Dckt. 48. Trustee opposes confirmation of the Plan on the basis that:

A. The Plan does not work mathematically and as proposed will complete in 88 months.

B. Debtor fails to explain and provide evidence for the increased deductions found in their amended Form 122C-2.

C. Debtor's counsel should file a separate motion to have fees approved.

D. It is unclear if Debtor has paid all child support arrearage listed on Schedule E.

E. Debtor has failed to provide the required 521 documents.

DEBTOR'S REPLY

Debtor filed a Reply on February 3, 2020. Dckt. 74. Debtor's Reply will be discussed below.

DISCUSSION

Trustee's concerns are well taken.

Failure to Complete Plan Within Allotted Time

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Chapter 13 Trustee, the Plan will complete in 88 months due to the proofs of claim filed the IRS, Ally Financial and GM Financial not accounted for by the Plan. Debtor's Plan would complete in time if Debtor's pay in their total monthly net income stated on Schedule J of $2,601.65. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

Debtor argues that the Plan will account for these claims by increasing the plan payment by $157.00.

Failure to Provide 521 Documents

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

Debtor responds that Debtor has now provided pay advices to the Trustee but that Debtor has yet to file tax returns for 2015 and 2018. Debtor will also file an amended Schedule I to account for Debtor's employer and address, and that co-debtor is employed. Debtor filed an amended Statement of Financial Affairs on February 5, 2020. Dckt. 76.

Failure to Afford Plan Payment

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). The Plan may not be feasible on the basis that Debtor has failed to explain and provide evidence of the increased deduction in Form 122C-2 for mandatory contributions to retirement and union dues.

Furthermore, there is a discrepancy between Schedule E and Debtor's Declaration in support of the Plan. Schedule E lists domestic support obligations of $46,554.00 to DCSS (Dckt. 1, at 20) and $46,138 to Solano County Child Support Services (*Id.* at 22.).

Debtor's Declaration states that Debtor has domestic support obligations and that Debtor is "current." The court is unsure as to what "current" means. Whether Debtor is current as to post-petition child support payments or if Debtor has address the pre-petition arrearage. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Debtor addresses these concerns by stating that:

1. Debtor will increase plan payment by $157.00.

2. The DCSS claim is nothing more but a duplicate of the Solano County and thus there is only one claim for $46,138.00 in arrearage.

3. The amended Form 122C-1 corrects information on expenses and deductions that had been previously submitted and thus accounting for the deduction discrepancies.

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

Debtor's present counsel responds that previous counsel will not be seeking fees related to this case, so that new counsel is only seeking the remainder of the "no look" fee.

Lastly, Debtor requests the objection should be continued so as to give Trustee time to review

the amended Schedules, Statement of Affairs, and tax returns for 2015 and 2018.

22. **19-27039-E-13 KL-1** | **DEREK/CHRISTINA MCCAULEY** | **Mohammad Mokarram** | **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DITECH FINANCIAL LLC** | **12-19-19 [15]**

WITHDRAWN BY M.P.

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

Ditech Financial LLC ("Creditor") having filed a Notice of Withdrawal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the** Objection to Chapter 13 Plan by Ditech Financial LLC **was dismissed without prejudice, and the matter is removed from the calendar.**

23. **19-26878-E-13 SDH-1** | **LOUIS JAVAR** | **Scott Hughes** | **MOTION TO CONFIRM PLAN** | **1-3-20 [24]**

WITHDRAWN BY M.P.

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

Louis Agalos Javar ("Debtor") having filed a Notice of Withdrawal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Motion to Confirm First Amended Chapter 13 Plan was dismissed without prejudice, and the matter is removed from the calendar.**