

UNITED STATES BANKRUPTCY COURT  
Eastern District of California

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

**February 12, 2019 at 3:00 p.m.**

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1. [18-23401-E-13](#) PAUL/SHERI D'ANGELO **OBJECTION TO CLAIM OF**  
[MWB-3](#) Mark Briden **FRANCHISE TAX BOARD,**  
**CLAIM NUMBER 6-1**  
**1-10-19 [75]**

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

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Local Rule 3007-1 Objection to Claim—Hearing Required.

**Sufficient Notice Not Provided.** The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 10, 2019. By the court's calculation, 33 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). The defaults of the non-responding parties and other parties in interest are entered.

**The Objection to Proof of Claim Number 6 of the Franchise Tax Board is overruled without prejudice as moot, having been superseded by a subsequently filed objection to claim.**

Paul Ricco D'Angelo and Sheri Lynn D'Angelo, Chapter 13 Debtor ("Objector") requests that the court disallow the claim of the Franchise Tax Board ("Creditor"), Proof of Claim No. 6 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of

\$116,218.32.

On January 22, 2019, Objector refiled its Objection, which the court interprets to be an Amended Objection To Claim. Dckt. 92. Having refiled the same Objection, this Objection is overruled as moot.

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

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

The Objection to Claim of Franchise Tax Board (“Creditor”), filed in this case by Paul Ricco D'Angelo and Sheri Lynn D'Angelo, 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 6 of the Franchise Tax Board is overruled without prejudice as moot, having been superceded by a subsequently filed objection to claim.

2. [18-23401](#)-E-13 PAUL/SHERI D'ANGELO  
[MWB-3](#) Mark Briden

**OBJECTION TO CLAIM OF  
FRANCHISE TAX BOARD,  
CLAIM NUMBER 6-1  
1-22-19 [92]**

**SUPERCEDING OBJECTION TO CLAIM**

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

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Local Rule 3007-1 Objection to Claim—Hearing Required.

Sufficient Notice Not Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 10, 2019. By the court's calculation, 33 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). The defaults of the non-responding parties and other parties in interest are entered.

**The Objection to Proof of Claim Number 6 of the Franchise Tax Board is overruled without prejudice.**

Paul Ricco D'Angelo and Sheri Lynn D'Angelo, Chapter 13 Debtor ("Objector") requests that the court disallow the claim of the Franchise Tax Board ("Creditor"), Proof of Claim No. 6 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$116,218.32.

**DISCUSSION**

**Insufficient Notice**

As stated, *supra*, only 33 days' notice was provided where 44 days' notice was 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).

Furthermore, the Notice Of Hearing filed by Objector states the Objection "shall be heard on November 20, 2018 . . ." (Dckt. 93 at 1:27), and the initial filed Objection included only a partial copy of the Objection. Dckt. 75.

Creditor has not responded to the Objection, which suggests that notice may not have been effected. This is grounds to overrule the Objection.

### **Failure to State Grounds With Particularity**

The Objection states the following grounds with particularity:

1. Objector filed this case May 31, 2018. Dckt. 92, ¶ 1.
2. Creditor filed Proof of Claim 6 on July 5, 2018, asserting an unsecured claim in the amount of \$116,218.32. *Id.*, ¶ 2.
3. "Debtors Object to this claim. The Proof of Claim was based on initial tax returns Filed by the debtors without legal assistance. Debtors have amended tax returns for years 2005 though [sic] 2016." *Id.*, ¶ 3.
4. In support of the Objection Objector filed the Declaration of Paul Ricco D'Angelo and Sheri Lynn D'Angelo. *Id.*, ¶ 4.

The Objection does not meet the requirement to state grounds with particularity. *See* FED. R. BANKR. P. 9013. The court is instructed that Creditor's claim as filed was based on old, now amended tax filings. The "obvious" logical conclusion is there were changes made to some of the filings for the 2007 to 2013 period (the Objection states returns were amended for 2007-2016, but the Declaration provided attests to amending only the 2007-2013 returns) which would thereby change the amount of Creditor's claim. However, no changes are explained, or even referenced in the Objection. No analysis of the prior and amended taxes is presented. The court is left to guess as to the grounds for relief here. This is additional cause to overrule the Objection.

### **Failure to Present Substantial Evidence**

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.

In support of the Objection Objector filed the Declaration of Paul Ricco D'Angelo and Sheri Lynn D'Angelo.<sup>FN.1.</sup> The D'Angelo Declaration states Creditor's claim was based on previously filed tax returns for 2007, 2009, 2015, and 2016. Dckt. 94 ¶ 4. The D'Angelo Declaration states further that those returns were filed incorrectly, and amended returns have been filed for the years 2007-2013. *Id.* The D'Angelo Declaration asserts the taxes owing based on the amended returns total \$14,947.96 for the 2007-2016 period. *Id.*, ¶ 5.

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FN.1. In reviewing the Declaration filed in support of the Objection, the court finds it fails to comply with the requirements for personal knowledge testimony. FED. R. EVID. 602. The Declaration implies (by stating that previous returns were filed "by us personally") that Paul Ricco D'Angelo and Sheri Lynn D'Angelo did not actually prepare the amended returns and would not therefore have personal knowledge of the facts attested to. Dckt. 94, ¶ 4.

Additionally, the Declaration states "We declare under penalty of perjury the foregoing is true and correct to the best Of our knowledge." *Id.* at p. 2:19.5-21 (emphasis in original). This does not meet the requirement under 28 U.S.C. § 1746 to affirm "under penalty of perjury" that "the foregoing is true and correct." Such a statement only reinforces the conclusion Paul Ricco D'Angelo and Sheri Lynn D'Angelo do not have personal knowledge of what they are attesting to.

Here, the Declaration seeks to establish amounts owing for a decade of tax returns. But, if what is stated turns out to be incorrect, then there are no repercussions because the Declaration was provided only "to the best of our knowledge."

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Notwithstanding the failure to state grounds with particularity, the court is not provided with substantial evidence. From the evidence provided the court can find Objector filed some tax returns incorrectly, and subsequently filed amended returns for the years 2007-2013. Dckt. 94. While Objector attests to what amounts are owed based on the amended filings, what is provided is merely a conclusion and not financial information or factual arguments. *In re Austin*, 583 B.R. at p. 483. Without evidence as to what Creditor's claim is (beyond Objector's bare conclusion "sworn" to in a declaration not complying with Federal Rule of Evidence 602 or 28 U.S.C. § 1746), the court cannot sustain the objection.

The Objection to the Proof of Claim is overruled without prejudice.

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

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

The Objection to Claim of Franchise Tax Board (“Creditor”), filed in this case by Paul Ricco D'Angelo and Sheri Lynn D'Angelo, 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 6 of the Franchise Tax Board is overruled without prejudice.

3. 18-23401-E-13     PAUL/SHERI D'ANGELO     **OBJECTION TO CLAIM OF INTERNAL  
MWB-5**     Mark Briden     **REVENUE SERVICE, CLAIM NUMBER  
4-1  
1-10-19 [80]**

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.  
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Local Rule 3007-1 Objection to Claim—Hearing Required.

Sufficient Notice Not Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 10, 2019. By the court’s calculation, 33 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). The defaults of the non-responding parties and other parties in interest are entered.

<p><b>The Objection to Proof of Claim Number 4 of the Internal Revenue Service is overruled as moot.</b></p>
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Paul Ricco D'Angelo and Sheri Lynn D'Angelo, Chapter 13 Debtor (“Objector”) requests that the court disallow the claim of the Internal Revenue Service (“Creditor”), Proof of Claim No. 4 (“Claim”), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount

of \$375,751.66.

On January 22, 2019, Objector refiled its Objection, which the court interprets to be an Amended Objection To Claim. Dckt. 96. Having refiled the same Objection, this Objection is overruled as moot.

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

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

The Objection to Claim of Franchise Tax Board (“Creditor”), filed in this case by Paul Ricco D'Angelo and Sheri Lynn D'Angelo, 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 the Internal Revenue Service is overruled as moot.

4. [18-23401-E-13](#) PAUL/SHERI D'ANGELO  
[MWB-5](#) Mark Briden

**OBJECTION TO CLAIM OF INTERNAL  
REVENUE SERVICE, CLAIM NUMBER  
4-1  
1-22-19 [96]**

### **SUPERCEDING OBJECTION TO CLAIM**

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

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Local Rule 3007-1 Objection to Claim—Hearing Required.

**Sufficient Notice Not Provided.** The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 10, 2019. By the court's calculation, 33 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). The defaults of the non-responding parties and other parties in interest are entered.

**The Objection to Proof of Claim Number 4 of the Internal Revenue Service is overruled without prejudice.**

Paul Ricco D'Angelo and Sheri Lynn D'Angelo, Chapter 13 Debtor ("Objector") requests that the court disallow the claim of the Internal Revenue Service ("Creditor"), Proof of Claim No. 4 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$375,751.66.

### **DISCUSSION**

#### **Insufficient Notice**

As stated, *supra*, only 33 days' notice was provided where 44 days' notice was 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).

Furthermore, the Notice Of Hearing filed by Objector states the Objection "shall be heard on January 29, 2019 . . ." (Dckt. 97 at 1:26.5), and the initial filed Notice and Declaration included only a partial copies. Dckts. 81, 82.

Creditor has not responded to the Objection, which suggests that notice may not have been effected. This is grounds to overrule the Objection.

### **Failure to State Grounds With Particularity**

The Objection states the following grounds with particularity:

1. Objector filed this case May 31, 2018. Dckt. 96, ¶ 1.
2. Creditor filed Proof of Claim 6 on June 18, 2018, asserting a secured claim in the amount of \$10,903.00 and an unsecured claim in the amount of \$371,568.07. *Id.*, ¶ 2.
3. "Debtors Object to this claim. The Proof of Claim was based on initial tax returns Filed by the debtors without legal assistance. Debtors have amended tax returns for years 2005 . . . [through] 2013." *Id.*, ¶ 3.
4. In support of the Objection Objector filed the Declaration of Paul Ricco D'Angelo and Sheri Lynn D'Angelo. *Id.*, ¶ 4.

The Objection does not meet the requirement to state grounds with particularity. *See* FED. R. BANKR. P. 9013. The court is instructed that Creditor's claim as filed was based on old, now amended tax filings. The "obvious" logical conclusion is there were changes made to some of the filings for the 2007 to 2017 period (the Objection states returns were amended for 2007-2013, but the Declaration provided attests to amending only the 2007-2017 returns) which would thereby change the amount of Creditor's claim. However, no changes are explained, or even referenced in the Objection. No analysis of the prior and amended taxes is presented. The court is left to guess as to the grounds for relief here. This is additional grounds to overrule the Objection.

### **Failure to Present Substantial Evidence**

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.

In support of the Objection Objector filed the Declaration of Paul Ricco D'Angelo and Sheri Lynn D'Angelo.<sup>FN.1.</sup> The D'Angelo Declaration states Creditor's claim was based on previously filed tax returns for 2007 through 2017. Dckt. 98 ¶ 4. The D'Angelo Declaration states further that those returns were filed incorrectly, and amended returns have been filed. *Id.* The D'Angelo Declaration asserts the taxes owing based on the amended returns total \$115,225.00 for the 2007 through 2017 period. *Id.*, ¶ 5.

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FN.1. In reviewing the Declaration filed in support of the Objection, the court finds it fails to comply with the requirements for personal knowledge testimony. FED. R. EVID. 602. The Declaration implies (by stating that previous returns were filed "by us personally") that Paul Ricco D'Angelo and Sheri Lynn D'Angelo did not actually prepare the amended returns and would not therefore have personal knowledge of the facts attested to. Dckt. 98, ¶ 4.

Additionally, the Declaration states "We declare under penalty of perjury the foregoing is true and correct to the best Of our knowledge." *Id.* at p. 2:18.5-19.5 (emphasis in original). This does not meet the requirement under 28 U.S.C. § 1746 to affirm "under penalty of perjury" that "the foregoing is true and correct." Such a statement only reinforces the conclusion Paul Ricco D'Angelo and Sheri Lynn D'Angelo do not have personal knowledge of what they are attesting to.

Here, the Declaration seeks to establish amounts owing for a decade of tax returns. But, if what is stated turns out to be incorrect, then there are no repercussions because the Declaration was provided only "to the best of our knowledge."

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Notwithstanding the failure to state grounds with particularity, the court is not provided with substantial evidence. From the evidence provided the court can find Objector filed some tax returns incorrectly, and subsequently filed amended returns for the years 2007-2017. Dckt. 96. While Objector attests to what amounts are owed based on the amended filings, what is provided is merely a conclusion and not financial information or factual arguments. *In re Austin*, 583 B.R. at p. 483. Without evidence as to what Creditor's claim is (beyond Objector's bare conclusion "sworn" to in a declaration not complying with Federal Rule of Evidence 602 or 28 U.S.C. § 1746), the court cannot sustain the objection.

The Objection to the Proof of Claim is overruled without prejudice.

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

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

The Objection to Claim of Franchise Tax Board ("Creditor"), filed in

this case by Paul Ricco D'Angelo and Sheri Lynn D'Angelo, 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 6 of the Franchise Tax Board is overruled without prejudice.

5. [18-25802-E-13](#)      **MICHAEL WALKER**      **MOTION TO CONFIRM PLAN**  
[MOH-1](#)                      **Michael Hays**                      **12-21-18 [30]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 21, 2018. By the court’s calculation, 53 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

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

Michael Eric Walker (“Debtor”) seeks confirmation of the Amended Plan, which would constitute Debtor’s first confirmed plan in this case. The Amended Plan provides for a total of \$4,306.00 paid through December 25, 2018; payments of \$2,000.00 through April 2019; \$2,282.00 in May 2018 and thereafter through the 60 month plan term; and a 0 percent dividend to unsecured claims totaling \$17,188.57. Dckt. 32. 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 29, 2019. Dckt. 39. Trustee opposes the Motion on the following grounds:

1. Debtor's Amended Plan does not provide for the secured claim of Patelco Credit Union (holding a first and second deed of trust), which was previously indicated on Debtor's original plan (Dckt. 9) and Schedule D. Dckt. 13. Debtor has not provided for the claim as an expense on Schedule J or otherwise.
2. Debtor erroneously provides for payments of \$2,282.00 to being in May 2018 and not May 2019. Trustee requests this be clarified in the language of the Order confirming plan.
3. Debtor is delinquent \$2,000.00 in plan payments with another payment due February 25, 2019.

## DISCUSSION

Trustee's Opposition is well-taken.

Debtor's Schedule D listed both a first and second mortgage held by Patelco Credit Union. Schedule D, Dckt. 13. Debtor's first proposed plan provided for the two claims separately as Class 1 claims. Dckt. 9. Debtor's Amended Plan provides for a single claim of Patelco Credit Union—possibly Debtor has consolidated the two claims as one in the Amended Plan. Without clarification, the plan does not appear feasible. 11 U.S.C. § 1325(a)(6).

Debtor's Amended Plan provides for payments of "\$2,282 ON 5/29/18 AND MONTHLY THEREAFTER THROUGH THE DURATION OF DEBTOR'S 60 MONTH PLAN." Amended Plan, Dckt. 32(emphasis in original). By the Amended Plan terms, Debtor would be significantly in default in plan payments. Without further clarification, the proposed Amended Plan is not feasible. 11 U.S.C. § 1325(a)(6).

Debtor is \$2,000.00 delinquent in plan payments, which represents one month of the \$2,000.00 payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

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

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by Michael Eric Walker (“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.

6. [18-26402-E-13](#)      **DENNIS/ROBIN COBB**      **MOTION TO CONFIRM PLAN**  
[MET-4](#)                      **Mary Ellen Terranella**                      **12-31-18 [40]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 31, 2018. By the court’s calculation, 43 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

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

Dennis Samuel Cobb and Robin Karen Cobb (“Debtor”) seek confirmation of the Amended

Plan, which would constitute the first confirmed plan in this case. The Amended Plan provides for payments of \$4,132.00 for the first 3 months, \$4,232.00 for the remaining 57 months, and a 0 percent dividend for unsecured claims totaling \$68,501.00. Dckt. 42. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

## **CREDITOR'S OPPOSITION**

Jason Bower ("Creditor") holding an unsecured claim filed an Opposition on January 22, 2019. Dckt. 48. Creditor requests its asserted unsecured claim in the amount of \$1,400.00 be found nondischargeable on the basis that Creditor was (intentionally) not properly notified of this bankruptcy case.

## **CHAPTER 13 TRUSTEE'S OPPOSITION**

The Chapter 13 Trustee, David Cusick ("Trustee") filed an Opposition on January 29, 2019. Dckt. 49. Trustee opposes confirmation on the basis that Debtor is delinquent \$8,264.00 in plan payments with another payment due February 25, 2019. Trustee further opposes the Motion on the basis that the plan relies on the Motion To Value Collateral of Rent-A-Center set for hearing January 29, 2019.

## **DISCUSSION**

### **Trustee's Grounds for Opposition**

Trustee's grounds for opposing the Motion are well-taken.

Debtor is \$8,264.00 delinquent in plan payments, which represents multiple months plan payments. 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).

Trustee further argues the Debtor's plan is also not feasible because it relies on a Motion To Value. *See* Dckt. 36. However, a review of the docket shows the court has issued an Order granting that Motion and valuing the claim of Rent-A-Center at \$500. Order, Dckt. 53.

### **Creditor's Grounds for Opposition**

Creditor does not actually assert any grounds for opposing confirmation. Rather, Creditor seeks a determination that his claim is nondischargeable (also concluding that confirmation should be denied, but without explaining why).

A determination of nondischargeability is properly presented before the court as a separate adversary proceeding, and not through the guise of opposition to confirmation.

## **Conclusion**

Debtor is delinquent in plan payments, indicating the plan is not feasible. 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 Dennis Samuel Cobb and Robin Karen Cobb (“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.

7. [16-20005-E-13](#) **BEVERLY BAUER**  
[MET-1](#) **Mary Ellen Terranella**

**MOTION TO MODIFY PLAN**  
**12-26-18 [116]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 26, 2018. By the court’s calculation, 48 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

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

Beverly Joe Bauer (“Debtor”) seeks confirmation of the Modified Plan to reflect decreased social security income and defaults in payment from unexpected expenses. Dckt. 118 at 2:11.5-21. The Modified Plan provides for plan payments of \$1,782.00 for 35 months and \$1,745.00 for 25 months, and provides 100 percent to unsecured claims. Modified Plan, Dckt. 120. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

#### **CHAPTER 13 TRUSTEE’S OPPOSITION**

David Cusick (“the Chapter 13 Trustee”) filed an Opposition on January 29, 2019. Dckt. 129. Trustee opposes confirmation on the basis that it is not currently feasible. The proposed Modified Plan provides for a missed post-petition payment of \$1,291.29 to creditor Ditech Mortgage to be paid as a Class 2A through the Plan. However, Trustee calculates that the Plan would only be feasible if 3 post-petition payments, totaling \$3,873.87 were treated as a Class 2A through the Plan.



## **DISCUSSION**

The proposed Modified Plan would not be timely completed in 60 months where three post-petition payments to Ditech Mortgage are due, and only a single payment is being provided for as a Class 2A.

Debtor filed as Exhibits A and B Supplemental Schedules I and J. Dckt. 119. Debtor's Supplemental Schedule J lists a net income of \$1,745.00. Therefore, Debtor would not be able to make the increased payment to provide for the three post-petition payments to Ditech Mortgage. The proposed Plan is not feasible. 11 U.S.C. § 1325(a)(6).

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

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by Beverly Joe Bauer ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

8. [18-26906-E-13](#) **OLIVERIO PADILLA**  
[DPC-1](#) **Richard Jare**

**CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY DAVID  
P. CUSICK  
12-11-18 [21]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on December 11, 2018. By the court's calculation, 49 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 -----

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**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 fail the liquidation test because:

(1) Debtor's listed property 701 Julian Drive, West Sacramento, California, is not his residence, and Debtor appears to have an interest in property not listed on the filed schedules. Debtor asserts that despite being on title, the

property “is in trust by parole.” Debtor has not provided sufficient information to demonstrate having no interest in the property despite being on title.

(2) Debtor indicated being married with 3 dependants, but lists Debtor’s spouse’s income as “unknown.” Debtor further clarified having been separated from his spouse for three years, and filed his 2017 tax return as single with no dependents.

- B. Debtor’s proposed plan is not his best efforts. Debtor is paying the claim of Mr. Cooper as a Class 1. That claim is secured by property commonly known as 904 Cummins Way, West Sacramento, California, which Debtor clarified is his wife’s home. Debtor states he pays the mortgage on the home in lieu of support, but has not provided supporting documentation.

Furthermore, Debtor’s possible interest in the 904 Cummins Way property creates additional concerns over Debtor’s best efforts where Debtor is obligated on the mortgage on behalf of his brother, Javier Padilla.

- C. Debtor’s first payment of \$1,000.00 will come due before the date of this hearing.
- D. Debtor lists his name as being “Oliverio Padilla Padilla” where his name appears to be simply “Oliverio Padilla.”

## **JANUARY 29, 2019 HEARING**

At the January 29, 2019 hearing the court continued the hearing on the Motion to February 12, 2019 at 3:00p.m. Dckt. 34.

## **DISCUSSION**

Trustee’s objections are well-taken.

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor’s plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). The Chapter 13 Trustee bases this assertion on Debtor having a possible interest in property (being on title), and Debtor representing having a spouse without providing that spouse’s income into the plan. The court agrees with the Trustee’s concerns here; despite Debtor’s belief that he has no interest in the 904 Cummins Way property, without actual evidence the court cannot come to the same conclusion. Further, there is no explanation why Debtor’s spouse’s income is not being put into the plan as community property. Debtor’s plan fails the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4), and also has not been show to be feasible under 11 U.S.C. § 1325(a)(6).

The Chapter 13 Trustee alleges that the Plan violates 11 U.S.C. § 1325(b)(1), which Code section 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.

The Plan proposes to pay a 0 percent dividend to unsecured claims, which total \$36,000, though Debtor may be making Class 1 payments to Creditor Cooper he is not obligated to, as well as payments to the debt securing the 904 Cummins Way property. Thus, the court may not approve the Plan.

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

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

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

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

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

9. [18-27506-E-13](#)      **CHRISTA HYLEN**  
[DPC-2](#)                      **Peter Cianchetta**

**OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P. CUSICK  
1-16-19 [12]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 16, 2019. By the court’s calculation, 27 days’ notice was provided. 14 days’ notice is required.

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

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

- A. The debtor, Christa L. Hylen (“Debtor”) is \$729.59 delinquent in plan payments.
- B. Debtor admitted at the Meeting of Creditors that no tax return for 2017 has been filed; and
- C. Debtor may not be able to make plan payments where Debtor's Schedule J shows -\$4,439.00 in net income; Debtor does not list income on

Schedule I for her or her non-filing spouse; Debtor has not provided any documentary support of a potential claim against the California Department of Tax and Fee Administration; and Debtor fails to list any income for 2018 on her Statement of Financial Affairs.

## **DISCUSSION**

Trustee's objections are well-taken.

The Chapter 13 Trustee asserts that Debtor is \$729.59 delinquent in plan payments, which represents one month of plan payments. 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).

Debtor admitted at the Meeting of Creditors that the federal income tax return for the 2017 tax year has not been filed still. Dckt. 14. 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).

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 shows -\$4,439.00 in net income, appropriate here given Debtor does not list any income on Schedule I for her or her non-filing spouse. Dckt. 1. Debtor lists on Schedule A \$100,000.00 from "Vik and Christa Hylan vs. State of California." *Id.* It appears Debtor seeks to fund the plan solely which the nonexempt funds of this claim. However, Debtor has not provided any documentary support to substantiate the claim and otherwise demonstrate this plan is feasible. 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.

10. [11-49910-E-13](#) **LINDA REED**  
[MS-1](#) **Mark Shmorgan**

**MOTION TO AVOID LIEN OF CAPITAL  
ONE BANK (USA), N.A.**  
1-25-19 [59]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on January 25, 2019. By the court’s calculation, 18 days’ notice was provided. 14 days’ notice is required.

The Motion to Avoid Judicial Lien 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, -----

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**The Motion to Avoid Judicial Lien is granted.**

This Motion requests an order avoiding the judicial lien of Capital One Bank, N.A. (“Creditor”) against property of Linda Carol Reed (“Debtor”) commonly known as 23945 County Road #22 Esparto, California (“Property”).

A judgment was entered against Debtor in favor of Creditor in the amount of \$18,911.91. An abstract of judgment was recorded with Yolo County on August 23, 2011, that encumbers the Property.

Pursuant to Debtor’s Amended Schedule A, the subject real property has an approximate value of \$435,000.00 as of the petition date. Dckt. 57. The unavoidable consensual liens that total \$620,919.00 as of the commencement of this case are stated on Debtor’s Amended Schedule D. *Id.* Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(5) in the amount of \$1.00 on Amended Schedule C. *Id.*

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor's exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

### **ISSUANCE OF A COURT-DRAFTED ORDER**

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Linda Carol Reed("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 judgment lien of Capital One Bank, N.A., California Superior Court for Yolo County Case No. G11-281, recorded on August 23, 2011, Document No. 2011-0022870-00, with the Yolo County Recorder, against the real property commonly known as 23945 County Road #22 Esparto, California ("Property"). is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.



11. [18-27413-E-13](#)  
[DPC-2](#)

MARWAN ABDULRAHIM  
Peter Macaluso

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P. CUSICK  
1-16-19 [24]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor’s Attorney, on January 16, 2019. By the court’s calculation, 27 days’ notice was provided. 14 days’ notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. 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, Marwan Abdulrahim (“Debtor”) may fail the liquidation test because the Debtor’s proposed plan offers a 0 percent dividend to unsecured creditors. Debtor’s residence has a listed value of \$340,000.00 and is encumbered by the lien of Wells Fargo Bank, N.A. in the amount of \$254,680.51. While several judicial liens also encumber the residence, Debtor proposes avoiding the liens in Class 2 of the proposed plan. Debtor only claiming an exemption of \$ 1.00 in the residence, there would be non-exempt equity of \$85,318.00 if Debtor successfully avoids

the judicial liens.

- B. Debtor admitted at the Meeting of Creditors he has paid Wyatt Russel, Esq. \$1,500.00 per month for 5-8 months to represent him in asserting claims against Wells Fargo Bank, N.A.. Debtor . Further, Debtor submitted bank statements for an account not listed on Schedules A/B. Therefore, Debtor failed to disclose potential nonexempt assets.
- C. Debtor's plan provides for several judicial liens to be avoided. However, no motions to avoid these liens have been filed.
- D. Trustee asserts that Debtor states that he owns and operates a business, but failed to provide requested documentation for said business. Debtor has failed to provide all documents necessary for the Trustee to fully assess the feasibility of the plan.

Trustee's objections are well-taken.

## DISCUSSION

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor's plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). Debtor is proposing a 0 percent dividend to unsecured claims. However, as discussed *infra*, Debtor potentially has non-exempt equity of \$85,318.00 in his residence. Furthermore, Debtor has undisclosed assets, including bank accounts and a lawsuit against Wells Fargo Bank, N.A. Based on the foregoing, Creditors are not receiving what they would in a Chapter 7 case.

Additionally, Debtor's plan proposes to avoid the judicial liens of Alan Bailey, State Board of Equalization, American Express, Household Finance Corp, the IRS, State Farm Mutual, the State of California Department of Tax and Fee Administration, and the Franchise Tax Board. However, no avoidance motions have been filed. Without the court granting the yet to be filed motions, the plan is not feasible. 11 U.S.C. § 1325(a)(6).

Debtor also failed to timely provide the Chapter 13 Trustee with business documents including:

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

11 U.S.C. §§ 521(e)(2)(A)(I), 704(a)(3), 1106(a)(3), 1302(b)(1), 1302(c); FED. R. BANKR. P. 4002(b)(2) & (3). Debtor is required to submit those documents and cooperate with the Chapter 13 Trustee. 11

U.S.C. § 521(a)(3). Without Debtor submitting all required documents, the court and the Chapter 13 Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325.

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

**REVIEW OF OTHER CASES FILED BY DEBTOR**

The undisclosed assets, failure to provide information about Debtor’s business, and paying an attorney to prosecute undisclosed litigation raises serious concerns. A review of the court’s records reflects that Debtor has been a frequent filer during this past decade. His other filings, in reverse chronological order are:

- A. Case 18-20693 - Chapter 7 Case, Counsel Peter Macaluso
  - 1. Filed.....February 8, 2018
  - 2. Chapter 7 Discharge.....May 14, 2018
  - 3. Case Closed.....June 1, 2018
  - 4. Disclosed Assets
    - a. Amended Schedule A/B; 18-20693, Dckt. 10.
      - (1) No “Other amounts someone owes you;” Statement of Financial Affairs Question 30.
      - (2) No “Claims against third parties, whether or not you have filed a lawsuit or made a demand for payment;” *Id.*, Question 33.
      - (3) No “Other contingent and unliquidated claims of every nature, including counterclaims of the debtor and rights to set off claims;” *Id.* Question 34.
      - (4) No “Any other financial assets you did not already list;” *Id.* Question 35.
      - (5) No “Business Related Property;” *Id.* Question 37.
  - 5. Income
    - a. Debtor states having \$3,000 a month income from operating a business. *Id.*, Schedule I, Dckt. 1. The “business” appears to be identified as Elite Audio Stereo for which Debtor lists his

“Occupation” as “Commission Sales.” From Part 1 of Schedule I, Debtor states that he is an “employee” of Elite Audio Stereo, but does not list any wages or commissions paid for such “employment.” *Id.*, Dckt. 1 at 30.

- b. On the Statement of Financial Affairs Debtor states that he has a business named “Tint-N-Sound.” *Id.*; Statement of Financial Affairs Question 27, Dckt. 1. However, he states that this business was operated from 2012 through August 2017. Thus, it is not the business from which Debtor was generating \$3,000 a month in net income as stated under penalty of perjury on Schedule I.

B. Case 16-24554, Chapter 13, Counsel Michael Benavides

- 1. Filed.....July 13, 2016
- 2. Dismissed.....August 1, 2016
- 3. Disclosed Assets
  - a. No Schedules filed.

C. Case 13-34662, Chapter 13, Counsel C. Anthony Hughes

- 1. Filed.....November 18, 2013
- 2. Chapter 13 Plan Confirmed.....June 5, 2014
- 3. Case Dismissed.....August 15, 2014
- 4. Disclosed Assets
  - a. Schedule A/B; 13-34662, Dckt. 9.
    - (1) Office and business equipment disclosed. Statement of 13-34662; Financial Affairs Question 28, Dckt 9 at 6.
    - (2) No claims against any other person listed as an asset.
    - (3) No business listed.
  - b. *Id.*; Schedule I, Dckt. 9 at 19-20.
    - (1) Debtor states that he is employed as a manager by “Tint-N-Sound.” However, he is not paid wages or commissions for working as a manager.

(2) Debtor states that he has \$12,000 a month in net income from a business.

(3) In response to Statement of Financial Affairs Question 18, Debtor states that Tint-N-Sound is his sole proprietorship.

D. Case 12-28979, Chapter 13, Counsel Stephen Ruehmann

1. Filed.....May 9, 2012
2. Dismissed.....September 19, 2012
3. No Plan confirmed.

E. Case 11-45905, Chapter 13, Counsel Stephen Ruehmann

1. Filed October 31, 2011
2. Dismissed March 27, 2012
3. No Plan 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.

12. [17-22614-E-13](#)      **MICHAEL/POLLY LANHAM**      **MOTION TO MODIFY PLAN**  
[WW-4](#)                      **Mark Wolff**                      **1-7-19 [116]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 7, 2019. By the court’s calculation, 36 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

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

Michael K. Lanham and Polly A Lanham (“Debtor”) seek confirmation of the Modified Plan to cure delinquency that primarily occurred when Debtor failed make the lump sum provided under the Confirmed Plan, which Debtor explains was due to confusion as to when the lump sum (funded by the sale of Debtor’s residence) was due. Dckt. 119. The Modified Plan provides for payments of \$517.20 for 20 months, \$760.00 for 40 months, and a \$35,000.00 lump sum payment in month 27. Modified Plan, Dckt. 118. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

**CHAPTER 13 TRUSTEE’S OPPOSITION**

David Cusick (“the Chapter 13 Trustee”) filed an Opposition on January 28, 2019. Dckt. 124. Trustee opposes confirmation on the following grounds:

1. The proposed payments, less the Trustee fees of \$4,643.40, would not amount to the \$63,763.42 necessary to pay creditors in the 60 month

plan term. Debtor would need to increase the proposed Modified Plan payment to \$840.00 over the remaining 40 months for the plan to be feasible.

2. The proposed Modified Plan seeks to pay \$13,069.61 to unsecured claims (12.3 percent of \$106,257.00). Debtor proposes the sale of Debtor's residence, valued at \$310,000.00. Debtor's residence is encumbered by a deed of trust in the amount of \$186,496.00, and claims an exemption of \$100,000.00 in the residence. With non-exempt equity of \$63,210.37 estimated from the sale of the residence, unsecured claims should be paid \$49,307.01.
  
3. Debtor's Supplemental Schedules I and J show a net income of \$727.50, which is less than the proposed plan payment of \$760.00. Furthermore, Debtor's Supplemental Schedules reflect a decrease in income, eliminate the expense Debtor's mortgage payment, and adjust other expenses (including removing Debtor's adult son as a dependant) all without explanation.

**DISCUSSION**

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). First, the proposed plan payment would not amount to the \$63,763.42 necessary to pay creditors in the 60 month plan term. Second, Debtor's Supplemental Schedules reflect a net monthly income less than the (insufficient) plan payment.

The Trustee also argues Debtor's Supplemental Schedule reflect fluctuating income and expenses that have not been explained. Debtor's prior Amended Schedule I listed an income of \$1,868.67 for Debtor 1 and \$1,950.00 for Debtor 2. Dckt. 93. Debtor's Supplemental Schedule I lists an income of \$1,004.50 for Debtor 1 and \$1,911.00 for Debtor 2. Dckt. 120. Debtor's Declaration states Debtor Polly suffered an income reduction of 50 percent in November 2018 due to surgery and being off work for two weeks. Dckt. 119 at 1:25-26. However, this leaves unexplained why the reduction in income persists.

Debtor's Supplemental Schedule J reflects the following changes in (notably all) expenses:

	Amended Schedule J	Supplemental Schedule J
Rental or Home Ownership Expenses	\$1,181.60	\$0
Electricity, Heat, Natural Gas	\$384	\$313
Water, Sewage, Garbage Collection	\$150	\$251

Telephone, Cell Phone, Internet, Satellite, and Cable Services	<b>\$190</b>	<b>\$492</b>
Food and Housekeeping	\$450	\$500
Transportation	\$350	\$300
Life Insurance	\$0	\$97
Vehicle Insurance	\$210	\$235

None of these changed expenses are accompanied with an explanation under penalty of perjury. The most concerning change to expenses is the elimination of the \$1,181.60 mortgage expense—it is unclear what circumstances have changed that Debtor no longer has any expense for housing.. Without an accurate picture of Debtor’s financial reality, the court cannot determine whether the Plan is confirmable.

The Chapter 13 Trustee further opposes confirmation of the Plan on the basis that Debtor’s plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). Debtor proposes to sell Debtor’s residence, valued at \$350,000.00. Schedule A, Dckt. 12. Liens on the residence and Debtor’s claimed exemptions total only \$284,469.63, leaving potentially significant non-exempt equity. Where Debtor proposes to pay \$13,069.61 to unsecured claims (12.3 percent of \$106,257.00), creditors are not receiving at least as much as they would in a case under Chapter 7.

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

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by Michael K. Lanham and Polly A Lanham (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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



13. [18-27717-E-13](#) ANTHONY/PATRICIA VANOVER **OBJECTION TO CONFIRMATION OF PLAN BY FORD MOTOR CREDIT COMPANY, LLC**  
[JHW-1](#) Gabriel Liberman 12-28-18 [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, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 28, 2018. By the court's calculation, 48 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 -----

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

Ford Motor Credit Company LLC ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that the proposed plan fails to provide adequate interest for Creditor's claim. Creditor argues the base interest rate should be 5.5 percent, which is the national prime interest rate as of December 27, 2018. Creditor argues further that risk factors suggest the interest rate should be increased to 7.5 percent here because 1) Debtor is on a tight budget, at high risk of default, and would not be able to cure in the event of default; and 2) the collateral is a vehicle which is a rapidly depreciating asset.

## DISCUSSION

Creditor's first objection is well-taken.

Creditor 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 4.75%. Creditor's claim is secured by a 2016 Ford Fusion. Creditor 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 provides the court with an analysis of the Debtor's strict budget and the "risk" it creates for Creditor. Objection, p.3:1-8; Dckt. 15. Debtor's family unit is six persons - the two debtors and four children who are listed as dependents. Schedule J, Dckt. 1. Debtor is not a "prime rate" borrower.

While making a good point with respect to Debtor's budget and how the court should consider the proper interest rate, Creditor then makes the following contention about it's collateral:

"(2) The Vehicle is a rapidly depreciating asset which loses value with continued use and time."

Objection, p. 2:9-10. The Objection states no grounds why a 2016 Ford Fusion, a four model year old vehicle is of such questionable value and reliability that rapid depreciation continues beyond the normal first two to three years of a new car's ownership, but into the fifth, sixth, and seventh year. No witness from Creditor, Ford Motor Credit Company, LLC, offers testimony about the impaired marketability of Ford vehicles.

Given this contention of such rapid depreciation, the court questions whether the value of \$10,564 for a claim secured by such a four model year old rapidly depreciating vehicle provided in the Plan is reasonable. It is interesting that in Proof of Claim No. 2 filed by Creditor it is not asserted that the value is, and has, fled from this vehicle. Creditor asserts that the rapidly depreciating four model year old vehicle has a value of \$12,850. As shown on the Purchase Agreement attached to Proof of Claim No. 2, the sale price of the vehicle, new off the lot, was \$22,371.

An internet search discloses the following information about new car depreciation from CarsDirect:

Although we don't usually think of depreciation as an expense, it's actually the single greatest cost involved with owning a new car. The old adage is true—your car will start to depreciate the instant you drive it off the lot.

How much are we talking? On average, **a new vehicle depreciates 19 percent in the first year, half of which occurs immediately after you take possession.** Fortunately, depreciation does not continue at this rate. You can expect a 15 percent drop in the second and third years. **As your vehicle**

**approaches five years old, depreciation slows considerably until it becomes negligible**, usually at the 10-year mark. After that, the condition and desirability of the model will be the main determinants of its worth. Your car will probably continue to lose value, not because of depreciation as such, but due to continued use that increases mileage and affects its overall condition.

<https://www.carsdirect.com/auto-loans/what-is-the-average-car-depreciation-rate> (Emphasis Added).

Kelly Blue Book, a recognized source of credible information concerning vehicles provides consistent information about depreciation, stating:

Like any other valuable asset that can become worn down through normal use, a car loses some of its value each year through general aging and every day wear and tear. This loss in value is known as car depreciation. Depreciation is primarily an accounting tool, rather than an accurate representation of the wear and tear a car receives on a yearly basis.

The rate of car depreciation varies depending on the year, make and model of the car. **The first year always sees the greatest depreciation hit** against the car's market value, with most cars losing about 20 percent or more of their original value. The loss continues onward from there, **with cars shedding about 60 percent of their original purchase price within the first five years on average**. When the time comes to sell your car, you may find that depreciation has greatly reduced the expected trade-in value for what could still be a well-functioning, nearly-new automobile.

<https://www.kbb.com/what-is/car-depreciation/> (Emphasis added).

Thus it appears that these two sources disagree with Creditor Ford Motor Credit Company, LLC's assertion that this Ford Vehicle continues to suffer the rapid depreciation that besets other manufactures vehicles only during the first four years of ownership.

This unsupported assertion of rapid depreciation causes the court to question the assertion of risk to be adjusted. It is unclear whether the rapid depreciation, and possibly the risk of payment grounds, are asserted in good faith.

At the hearing, Counsel for Creditor Ford Motor Credit Company, LLC reported to the court the information provided to Counsel in asserting that rapid depreciation would continue through years 5-10 of ownership in making such contention (subject to the certifications of Federal Rule of Bankruptcy Procedure 9011), stating **XXXXXXXXXX**

The court agrees with the court in *Cachu* that the correct valuation of the interest rate is the prime rate in effect at the commencement of this case plus a risk adjustment. Because the creditor has only identified risk factors common to every bankruptcy case, the court fixes the interest rate as the prime rate in effect at the commencement of the case, 5.5%, plus a .5% risk adjustment, for a 6.00%

interest rate. The objection to confirmation of the Plan on this basis is sustained. *See* 11 U.S.C. § 1325(a)(5)(B)(ii).

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 Ford Motor Credit Company LLC (“Creditor”) holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

14. [15-28322-E-13](#)  
[EWG-1](#)

LISA TOLBERT  
Elliot Gale

MOTION TO MODIFY PLAN  
12-19-18 [164]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 19, 2018. By the court's calculation, 55 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

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

Lisa Denise Tolbert ("Debtor") seeks confirmation of the Modified Plan to make a lump sum payment to complete all required plan payments.. Dckt. 166, ¶ 6. The Modified Plan provides that \$8,675.00 has been paid into the plan through December 2018, a lump sums of \$6,482.81, \$4,957.81, and \$1,525.00 will be made in January 2019. Dckt. 168. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

#### CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on January 25, 2019. Dckt. 171. Trustee opposes confirmation on the ground that Debtor mistates \$8,675.00 has been paid into the plan, where only \$7,675.00 has been paid.

Trustee further opposes confirmation on the basis that the proposed lump sums of \$4,957.81

and \$1,525.00 paying off the secured claims of Santander Consumer USA and Milestonez Jewelers, respectively, do not provide compensation for the interest due on either claim. Trustee asserts the balance on hand of \$6,022.53 (net of Trustee's fees) is adequate to pay the claim of Santander Consumer USA alone, not combined with the claim of Milestonez Jewelers.

## **DISCUSSION**

Trustee's Opposition is well-taken. Trustee states that only \$7,675.00 has been paid into the plan. Dckt. 172. Where the proposed Modified Plan provides for \$8,675.00 to be paid into the plan through December 2018, Debtor would be in default under the plan terms and the plan would not be feasible. 11 U.S.C. § 1325(a)(6).

Furthermore, the proposed plan indicates the claim of Santander Consumer USA holds an interest rate of 4.25 percent, and the claim of Milestonez Jewelers holds an interest rate of 2 percent. Debtor's proposed lump sums do not provide the secured claims of Santander Consumer USA and Milestonez Jewelers accrued interest. Therefore, the proposed plan is not feasible. 11 U.S.C. § 1325(a)(6).

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

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by Lisa Denise Tolbert ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

15. [18-27822-E-13](#) **OMAR/ALETHEA PEREZ** **MOTION TO VALUE COLLATERAL OF**  
[CYB-1](#) **Candace Brooks** **HARLEY-DAVIDSON CREDIT**  
**CORPORATION**  
**1-28-19 [21]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on January 28, 2019. By the court’s calculation, 15 days’ notice was provided. 14 days’ notice is required.

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

**The Motion to Value the Secured Claim of the Harley-Davidson Credit Corporation (“Creditor”) is granted, and Creditor’s secured claim is determined to have a value of \$6,310.00.**

The Motion filed by Omar Perez and Alethea C Perez (“Debtor”) to value the secured claim of the Harley-Davidson Credit Corporation (“Creditor”) is accompanied by Debtor’s declaration. Debtor is the owner of a 2015 Harley Davidson XL 1200CP (“Vehicle”). Debtor seeks to value the Vehicle at a replacement value of \$6,310.00 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).

The lien on the Vehicle’s title secures a purchase-money loan incurred on June 5, 2015, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a

balance of approximately \$8,637.00. 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 \$6,310.00, 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 Omar Perez and Alethea C Perez ("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 the Harley-Davidson Credit Corporation ("Creditor") secured by an asset described as 2015 Harley Davidson XL 1200CP ("Vehicle") is determined to be a secured claim in the amount of \$6,310.00, 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 \$6,310.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.



16. [18-27822-E-13](#) **OMAR/ALETHEA PEREZ** **MOTION TO VALUE COLLATERAL OF**  
[CYB-2](#) **Candace Brooks** **COMENITY BANK**  
**1-28-19 [26]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on January 28, 2019. By the court’s calculation, 15 days’ notice was provided. 14 days’ notice is required.

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

**The Motion to Value the Secured Claim of Comenity Bank (“Creditor”) is granted, and Creditor’s secured claim is determined to have a value of \$200.00.**

The Motion filed by Omar Perez and Alethea C Perez (“Debtor”) to value the secured claim of Comenity Bank (“Creditor”) is accompanied by Debtor’s declaration. Debtor is the owner of a Citizen ladies’ watch (“Property”). Debtor seeks to value the Property at a replacement value of \$200.00 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).

The lien on the Property secures a purchase-money loan incurred in 2016, which is more than one year prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$1,107.00. Therefore, Creditor’s claim secured by a lien against the Property is under-collateralized. Creditor’s secured claim is determined to be in the amount of \$200.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11

U.S.C. § 506(a) is granted.

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

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

The Motion to Value Collateral and Secured Claim filed by Omar Perez and Alethea C Perez (“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 Comenity Bank (“Creditor”) secured by an asset described as Citizen ladies’ watch (“Property”) is determined to be a secured claim in the amount of \$200.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$200.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

17. [18-27822-E-13](#) **OMAR/ALETHEA PEREZ** **OBJECTION TO CONFIRMATION OF**  
[DPC-1](#) **Candace Brooks** **PLAN BY DAVID P. CUSICK**  
**1-18-19 [15]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, and Debtor’s Attorney on January 18, 2019. By the court’s calculation, 25 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 **overruled**.**

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

- A. Debtors, Omar and Alethea Perez (“Debtor”), propose to value the secured claims of Harley Davidson Credit and Comenity Bank-Kay Jewelers, but have not filed motions to value collateral for either claim.
- B. The Debtor has not properly specified the dividend to unsecured claims. The plan states “0.5 0.4 % dividend.” Dckt. 3(emphasis in original).

## **DISCUSSION**

Debtor’s Plan shows that it relies on the court valuing the secured claims of Harley Davidson

Credit and Comenity-Bank Kay Jewelers. A review of the court's docket shows Debtor has since filed motions seeking the valuation of both claims. Dckt. 21, 26. Those Motions were set for hearing the same day as the hearing on the present Motion, and have been granted.

Trustee's remaining objection is that the plan is not clear as to what dividend is provided to unsecured claims—0.4, or 0.5 percent.

At the hearing, **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,

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~~**IT IS ORDERED** that the Objection is overruled, and Omar Perez and Alethea C Perez's ("Debtor") Chapter 13 Plan filed on December 17, 2018, is confirmed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

18. [18-27524-E-13](#)      **DAVID FOYIL**  
[DPC-2](#)                      **Pro Se**

**OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P. CUSICK  
1-18-19 [34]**

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

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor (*pro se*) on January 18, 2019. By the court’s calculation, 25 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, David Eugene Foyil (“Debtor”), lists secured debts totaling \$1,067,182.00, which amount would not exceed the \$1,184,200 secured debt limit for Chapter 13 eligibility provided in 11 U.S.C. § 109(e).

However, Creditors have filed asserts secured claims for at least \$1,382,163.28. Proofs of Claim Nos. 1-1, 2-1, 6-1, 9-1. This exceeds the Chapter 13 eligibility secured debt limit. PennyMac Holdings, LLC alone has filed a secured claim for \$1,325,661.73. Proof of Claim No. 6-1.

The Trustee's Objection theorizes that "[the Debtor may have intentionally failed to disclose the full claim amount owed to PennyMac listing the debt as \$733,645 on Schedule D. The Debtor was previously in a Chapter 11 case 16-22194, in which PennyMac filed claim 5 on June 3, 2016, claiming a secured amount of \$1,213,364.52, with a default amount of \$516,145.95." Objection, p. 2:5.5-9.5; Dckt. 34.

- B. Debtor 's plan proposes an Ensminger Provision for the claim of PennyMac, but fails to provide any adequate protection payment. Based on section 3.07 of the proposed plan, the claim of PennyMac should be in Class 1 given the significant arrears.
- C. Debtor has proposed to value the secured claims of Chrysler Capital, IRS, and Nissan Motors, but has not filed and the motions to value collateral.
- D. Debtor proposes to avoid the judicial liens held by the Franchise Tax Board and IRS, but has not filed motions to avoid lien.
- E. Debtor lists ordinary and necessary business expenses of \$33,333.34, but has not properly completed the Statement of Current Monthly Income.
- F. Debtor failed to provide proof of his Social Security Number to the Trustee to establish Debtor's identity. The Meeting of Creditors was continued to February 7, 2019 to allow Debtor to provide their Social Security Number.

Trustee's objections are well-taken.

### **Motion to Convert Case**

On January 23, 2019, Debtor filed a Motion to Convert Case to Chapter 11. Dckt. 38. In it Debtor states that while not conceding the amount of the PennyMac Secured claim, he notes that such amount cannot be finally determined until discovery is conducted. Additionally, Debtor notes that if he were to stay in Chapter 13 the Trustee fees will exceed \$50,000.

The court notes that this is Debtor's second case in the past year and fourth case in the past four and one-half years. In his 2016 Chapter 11 case, Debtor listed the PennyMac secured claim in the amount of \$1,200,000, stating that it was disputed. 16-22194; Schedule D, Dckt. 23 at 11. No plan was filed in that Chapter 11 case. The 2016 Chapter 11 case was dismissed on June 29, 2016, (two and one-half months after it was filed) by the court at the Status Conference due to Debtor's failure to fulfill the basic obligations of a debtor in Chapter 11 and as the debtor in possession. *Id.*; Civil Minutes, Dckt. 57, and Order, Dckt. 59.

### **DISCUSSION**

Debtor does not qualify for Chapter 13 treatment because the secured debt limit in 11 U.S.C. § 109(e) has been exceeded. That section limits Chapter 13 eligibility to individuals with regular income who owe “on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than \$394,725 and noncontingent, liquidated, secured debts of less than \$1,184,200.” Proof of Claim no. 5 filed by creditor PennyMac Holdings, LLC asserts a secured claim of \$1,382,163.28. Therefore, Debtor is not entitled the Chapter 13 relief.

Debtor’s proposed plan seeks to treat the claim of PennyMac Holdings LLC with an Ensminger Provision, providing adequate protection payments while seeking a loan modification, as well as providing for the collateral to be surrendered in the event a modification is denied. Trustee appears to object on the basis no adequate protection amount is specified. However, in section 7.02.2 of the plan, Debtor specifies that the monthly installment amount shall be paid as an adequate protection payment. Furthermore, Section 7.02 states the monthly contract installment amount is \$4,980.00.

A review of Debtor’s Plan shows that it relies on the court valuing the secured claims of Chrysler Capital, IRS, and Nissan Motors, and avoiding the liens of the Franchise Tax Board and IRS. Debtor has not filed any motions to value collateral or avoid liens. Without the court valuing the claims and avoiding the liens, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

Debtor did verify his identity at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Appearance is mandatory. *See* 11 U.S.C. § 343. Attempting to confirm a plan while failing to appear and be questioned by the Chapter 13 Trustee and any creditors who appear represents a failure to cooperate. *See* 11 U.S.C. § 521(a)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

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

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.

19. [18-21225-E-13](#)      **RITA KAKALIA**      **MOTION TO MODIFY PLAN**  
[PGM-2](#)      **Peter Macaluso**      **1-4-19 [46]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 4, 2019. By the court’s calculation, 39 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

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

Rita Vaavaai Ene Kakalia (“Debtor”) seeks confirmation of the Modified Plan to cure defaults in plan payments that occurred after increased expenses for car repairs, house repairs, and family expenses. Dckt. 50, ¶ 2. The Modified Plan provides for \$21,430.00 to be paid through December 2018, and then payments of \$3,965.00 for 51 months beginning January 25, 2019. Dckt. 49. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

**CHAPTER 13 TRUSTEE’S OPPOSITION**

David Cusick (“the Chapter 13 Trustee”) filed an Opposition on January 28, 2019. Dckt. 58. Trustee opposes confirmation on the basis that the Modified Plan relies on increased contributions from Debtor’s daughters in the amount of \$450 (increasing contribution from \$650 to \$1,100). Trustee has no way to verify these contributions where Debtor’s daughters have not provided a declaration under



penalty of perjury.

## **DEBTOR'S REPLY**

On February 5, 2019, Debtor filed a Reply, and then on February 7, 2019, two Declarations. In the Reply, Debtor states that given the Trustee having asserted an opposition, the Debtor will obtain the evidence that was necessary to be filed with the Motion for the additional income to fund the Plan. (The court paraphrases the Reply, with appropriate "shading" for this discussion.)

This Reply appears to demonstrate a belief by Debtor that the federal court process is one in which a party does not need to provide the court with evidence to support the relief sought, but rather, to see what she can slip by the court. Then, when challenged by the Chapter 13 Trustee, who has been forced to do otherwise unnecessary work to identify for the court the Debtor's failure to provide the required evidence, Debtor begrudgingly states that she will provide the declarations. (Again, as shaded by the court in evaluating Debtor's conduct.)

Debtor, on February 7, 2019, thirty-four (34) days after the Motion was filed and just five days before the hearing (after the response period had expired) drops on the court and parties in interest the Declaration of Noeliani Kakalia. Declaration, Dckt. 63. In it, Noeliani Kakalia testifies:

- A. She "understands" that her mother is in a Chapter 13 bankruptcy case. Dec. ¶ 1, Dckt. 63.

This is curious language, as if she really doesn't know, has not spoken with the Debtor's attorney, and is just signing whatever is put in front of her.

- B. "That subject to this plan my mother must make certain payments to the Chapter 13 Trustee." Dec. ¶ 2.

While referencing "this plan," no plan is attached or identified by the Declarant. Again, this "testimony" appears to be divorced from any actual knowledge or reality.

- C. "That in support of this plan I will contribute to my mother up to \$700.00 per month." Dec. ¶ 3.

Again, the Declarant does not appear to know what the "plan" is, but that she will contribute \$8,400 a year, or \$42,000 over the five years of the "plan" to the Debtor. When making such a \$42,000 "gift" to a debtor, the court would expect very knowledgeable testimony from a witness.

- D. "That I can afford to make this \$400.00 per month payment to my mother's Chapter 13 Plan." Dec. ¶ 4.

Here, the Declarant offers no testimony as to how over a five year period she has an extra \$42,000 to give to the Debtor. No income information is provided. No expense information is provided. Additionally, in this last paragraph the Declarant states that she can afford to only make \$400 a month

gift to the Debtor, not the \$700 she purports to commit to in paragraph 3 of the Declaration. It appears that the purported Declarant may not have even read (or possibly signed) the Declaration.

A second Declaration has been filed, this time identifying the Declarant as Amika Kakalia. Declaration, Dckt. 64. This appears to be a “carbon copy” (for those old enough to recall the use of carbon paper to make copies of a document) of the Noeliani Kakalia Declaration. For Amika Kakalia, she does not demonstrate an actual knowledge of her testimony. While she says that she can and will make a \$400 a month, \$4,800 a year, payment to the Debtor to fund some plan, she offers no testimony how she can make such a gift of \$24,000 over a five year period.

## **DISCUSSION**

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor’s proposed plan relies on significant contributions from family members. Debtor has not provided credible evidence that these contributions are reliable. Without an accurate picture of Debtor’s financial reality, the court cannot determine whether the Plan is confirmable.

Debtor failed to provide the minimum evidence with the Motion to Confirm to show she could afford to make the payments. She failed to offer evidence of the \$66,000 in gift income that she would have to received to fund the Plan. When, after this fundamental failure to provide evidence was pointed out by the Trustee, Debtor merely offers non-credible pleadings titled “Declarations” that she would be given the \$66,000 by her two daughters.

This is not Debtor’s first recent bankruptcy case. In July of 2016, she commenced a Chapter 13 case, represented by the same Counsel as in this case. On October 25, 2016, the court entered an order confirming a Chapter 13 Plan in the 2016 Case. 16-24364; Order, Dckt. 45. The Plan in the 2016 Case required Debtor to make \$3,540 a month plan payments for 60 months. *Id.*; Plan, Dckt. 13. To be able to afford making such payments, Debtor required monthly gifts of \$650 from her two daughters, as well as generating \$959 a month from a second job. *Id.*, Schedules I and J, Dckt. 14 at 18-21.

On May 30, 2107, less than a year after the 2016 Chapter 13 Case was filed, the Chapter 13 Trustee filed a Notice of Default and Motion to Dismiss. *Id.*; Notice/Motion, Dckt. 58. The grounds stated in the Notice and Motion was that Debtor was \$6,530.00 in default in required Plan payments (two months).

This resulted in Debtor filing a Modified Plan and Motion to Confirm. In the Motion, Debtor stated with particularity that she “[h]as several changes/problems that have arose which now require me to further modify my Chapter 13 Plan. These factors include the rise in utility, auto repairs & maintenance, household repairs, medical and dental fees nonconvered and deductibles.” 16-24364; Motion, Dckt. 60. Nothing with respect to these grounds are stated with particularity (Fed. R. Bankr. 9013), but only vague and general references are made. As stated, it appears that Debtor may have misrepresented her expenses on Schedule J to create the false representation that she had sufficient disposable income to fund a Chapter 13 plan.

In her Declaration in support of the Motion to Confirm a Modified Plan, Debtor’s testimony

appears to be a cut and paste of the vague statements in the Motion. *Id.*, Declaration, Dckt. 62. The Modified Plan was confirmed (which forgave all defaults and did not require any of those monies diverted by Debtor to be paid into the Modified Chapter 13 Plan). *Id.*; Modified Plan, Dckt. 64, and Order, Dckt. 67.

The Order confirming the Modified Plan was filed on August 20, 2017. Three months later, on November 29, 2017, the Chapter 13 Trustee filed a Notice of Default and Motion to Dismiss. *Id.*, Dckt. 69. As of November 29, 2017, the Debtor was in default \$6,800 on the payments required under the Modified Chapter 13 Plan in the 2016 Chapter 13 Case. *Id.* This represents two monthly of Plan payments (for October and November 2017), indicating that almost immediately after obtaining the August 2017 order confirming the Modified Chapter 13 Plan, the Debtor defaulted on the Modified Chapter 13 Plan.

On January 9, 2018, the court dismissed the 2016 Chapter 13 Case. *Id.*; Order, Dckt. 72. The Debtor offered no response to the Notice and Motion to Dismiss.

### **Current Case Filing and Defaults**

Then, on March 2, 2018, (just two months later), Debtor commenced the current case before the court. On June 5, 2018, the court's order confirming a Chapter 13 Plan in this case. Order, Dckt. 37. To confirm the Plan in this case, the court, Chapter 13 Trustee, and Creditors required on the information provided under penalty of perjury by Debtor on Schedules I and J. Dckt. 1 at 28-32. Debtor shows as income gifts from her two daughters totaling \$700 a month, which total \$8,400 a year, and \$42,000 a year. *Id.* at 29. With this income, Debtor states under penalty of perjury on Schedule J that she has Monthly Net Income of \$3,515.00 to fund a plan. This is exactly the amount required to perform the Plan (Dckt. 5) that was confirmed by the court.

The Order confirming the Chapter 13 Plan was filed on June 19, 2018. On December 7, 2018, the Chapter 13 Trustee filed a Motion to Dismiss this Chapter13 Case. Motion, Dckt. 38. The grounds stated in the Motion is tat as of December 7, 2018, the Debtor was in default \$7,951.76 in required plan payments (two months). Again, the Debtor defaulted in payments just four months after the order confirming the Plan was filed.

In the Motion to Confirm the Modified Plan filed in response to the Motion to Dismiss, the grounds stated with particularity in the Motion (Fed. R. Bankr. P. 9013) and Debtor's testimony are vague, merely stating that Debtor's expenses were greater than she thought. Motion, Dckt. 46; Declaration, Dckt. 50. In this proposed Modified Plan, as in the prior 2016 Chapter 13 Case modified plan, Debtor seeks to be "forgiven" of the \$7,951.76 that she diverted from creditors and just "start fresh" with some new plan payments.

Debtor's conduct demonstrates a continuing inability to fund a plan. Debtor has repeatedly defaulted in what she has promised the court. Debtor strategically did not provide evidence of the "gifts" from her daughters, waiting until days before the hearing to slip in the two general declarations. Debtor has withheld the necessary financial information for the court to determine that the two daughters can make the \$66,000 in "gifts" to fund the plan.

Debtor has repeatedly made the promises she has broken and provided the general, generic allegations and testimony with the assistance of very knowledgeable Counsel. If such credible testimony existed, the court is confident that it would have been presented.

In addition to the Plan not being feasible, Debtor has demonstrated that she did not file, is not prosecuting this case, did not propose the original plan, and is not proposing the Modified Plan in good faith as required by 11 U.S.C. § 1325(a)(3)

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

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by Rita Vaavaai Ene Kakalia (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

20. [18-27533-E-13](#) **DAVID/DONNA WINDMILLER** **OBJECTION TO CONFIRMATION OF**  
[DPC-1](#) **Peter Cianchetta** **PLAN BY DAVID CUSICK**  
**1-16-19 [14]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor’s Attorney January 16, 2019. By the court’s calculation, 27 days’ notice was provided. 14 days’ notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing -----  
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**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. David Windmiller and Donna Windmiller, the debtors (“Debtor”), have nonexempt equity of \$61,387.00 in their real property, \$500.00 in cash, \$20.00 in their bank account, and \$145.00 in stock (totaling \$62,052.00). However, Debtor only proposes a 34 percent dividend to unsecured claims, amounting to \$28,541.00.
- B. Debtor admitted at the Meeting of Creditors Debtor failed to list on Schedule J an expense for property tax and insurance. The increased

expense will reduce net income by approximately \$260.00 per month. Where Debtor's net income was listed at \$2,426.40, Debtor would not longer be able to make the \$2,425.00 plan payment.

- C. Debtor failed to provide the Class 1 Checklist and Authorization Release Information Forms.
- D. Debtor admitted at the Meeting of Creditors that the petition does not correctly state Debtor's full name.

## **DISCUSSION**

Trustee's Objections are well-taken.

Debtor only proposes a 34 percent dividend to unsecured claims, amounting to \$28,541.00. However, Debtor's nonexempt assets total \$62,052.00. Debtor's plan fails the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4).

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor failed to list expenses for property tax and insurance, which Debtor admitted total approximately \$260.00 per month. Dckt. 16. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Local Bankruptcy Rule 3015-1(b)(6) requires a Chapter 13 Debtor file Forms EDC 3-086 (Class 1 Checklist) and EDC 3-087 (Authorization to Release Information to Trustee Regarding Secured Claims to be Paid by the Trustee). Debtor failed to provide the Class 1 Checklist and Authorization Release Information Forms.

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.

21. [19-20238](#)-E-13 **MANUEL SAUCEDO-GONZALEZ AND REGINA SAUCEDO** **MOTION TO EXTEND AUTOMATIC STAY**  
[BLG-1](#) **Chad Johnson** **1-22-19 [9]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 22, 2019. By the court’s calculation, 21 days’ notice was provided. 14 days’ notice is required.

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

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

Manuel Saucedo-Gonzalez and Regina Saucedo (“Debtor”) seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor’s second bankruptcy petition pending in the past year. Debtor’s prior bankruptcy case (No. 18-20217) was dismissed on December 6, 2018. , after Debtor fell delinquent in plan payments. *See* Order, Bankr. E.D. Cal. No.18-20217, Dckt. 40, December 6, 2018. 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 of unexpected costs associated with emergency surgery, and debtor Manuel

Saucedo-Gonzalez's being unemployed 6 months. Debtor asserts that the medical issues have been resolved, and debtor Manuel Saucedo-Gonzalez has found new employment. Dckt. 11 at ¶¶ 5-6.

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

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

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

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

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

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

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

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

The Motion to Extend the Automatic Stay filed by Manuel Saucedo-Gonzalez and Regina Saucedo (“Debtor”) having been presented to the



court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

22. [18-21839-E-13](#) **FRANCISCA GARAY** **CONTINUED MOTION TO MODIFY**  
[ADR-1](#) **Justin Kuney** **PLAN**  
**11-14-18 [37]**

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

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

Sufficient Notice Not Provided. No Proof of Service was filed with the Motion and supporting documents establishing when and how many 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). Without having provided evidence, the court cannot determine the sufficiency of notice, if any was provided.

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).

<p>The Motion has been granted and the Order Confirming previously entered by the Court, Dckt. 51. <b>The Matter is removed from the Calendar.</b></p>
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**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 21, 2018. By the court’s calculation, 53 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

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

Steven Claude Smith (“Debtor”) seeks confirmation of the Amended Plan, Which would constitute Debtor’s first confirmed plan in this case. The Amended Plan provides for payments of \$500 for 4 months, \$1,000 for 20 months, \$1,925 for 12 months, and \$2,000 for 24 months. Dckt. 58. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

#### CHAPTER 13 TRUSTEE’S OPPOSITION

David Cusick (“the Chapter 13 Trustee”) filed an Opposition on January 29, 2019. Dckt. 67. Trustee opposes confirmation on the following grounds:

1. Debtor is delinquent \$1,479.00 in plan payments.
2. Debtor’s plan proposes increased plan payments by \$925 beginning in month 25 and another \$1,000 in month 37. However, Schedule I does not indicate Debtor has the ability to make these stepped up payments.

3. The claim of creditor Carrington Mortgage Services matures in 2021 and should be provided as a Class 2, not a Class 1.
4. The plan proposes to set the Trustee fee in violation of 28 U.S.C. § 586.

### **DEBTOR'S DECLARATION IN SUPPORT OF THE MOTION**

Debtor filed a Declaration in support of the Motion on January 31, 2019. Dckt. 70. Responding to Trustee's concern that Debtor will not have sufficient income to support the stepped up payments, Debtor states that he will be converting his garage to be a rent-compliant dwelling and expects to generate \$800-1,000 in rent income. *Id.* at ¶¶ 4-5. The conversion is estimated to take 6-9 months, and will go through a remodeling and permitting process. *Id.* Debtor states if there is an income shortfall beginning month 36 of the plan, Debtor will create a set up for a mobile home on Debtor's property for additional rental income. *Id.* at ¶ 6.

Debtor also states his wife is not currently working, but anticipates resuming work before the end of 2019. *Id.*

### **“OBJECTION” OF CREDITOR**

The Bank of New York Mellon fka The Bank of New York, as Trustee for the Certificate holders of CWABS, Inc., Asset Backed Certificates, Series 2006-SPS2, its assignees and/or successors in interest (“Creditor”) holding a secured claim filed an “Objection” on January 21, 2019. Dckt. 62. Creditor opposes confirmation of the Plan on the basis that:

- A. The Plan proposes to pay Creditor nothing for the first seven months, then \$675.00 per month for twenty-one months, \$1,375.00 per month for twelve months, and \$1,535.00 per month for twelve months. Creditor does not consent to receive payment in unequal amounts.
- B. Debtor's Schedule J indicates that Debtor has \$1,003.00 in disposable income, however the Debtor provides for payments of well over \$1,003.00 to Creditor in the final twenty-four months of the plan. Debtor has not provided any explanation of how he intends to meet his obligations to Creditor under the plan.

Creditor requests in its prayer for relief that the proposed Amended Plan be denied, that Creditor be awarded its attorney's fees, and that this Chapter 13 case be dismissed.

### **DISCUSSION**

The Chapter 13 Trustee asserts that Debtor is \$1,479.00 delinquent in plan payments, which represents multiple months plan payments. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Debtor's Amended Schedules I and J list a net income of \$1,003.00, which is not enough to make the stepped up plan payments beginning in month 25. Dckt. 60. While Debtor relays in his Declaration a plan to remodel his garage to generate additional income, Debtor does not discuss what the anticipated expenses of the remodeling and permitting process are likely to be, or where Debtor is getting funds for these expenditures while putting all disposable income into the Chapter 13 plan. The court is further concerned where Debtor expects his wife to begin working, but describes the prospective income as only a "supplement" to the rent income. Debtor's plan does not have been demonstrated to be feasible. 11 U.S.C. § 1325(a)(6).

The claim of creditor Carrington Mortgage Services matures in 2021 and should be provided as a Class 2, not a Class 1, and the plan proposes to set the Trustee fee in violation of 28 U.S.C. § 586. These grounds further suggests the plan is not feasible. 11 U.S.C. § 1325(a)(6).

The Bankruptcy Code provides that where property to be distributed is in the form of periodic payments, such payments shall be in equal monthly amounts. 11 U.S.C. § 1325(a)(5)(B)(iii)(I). Debtor's proposed plan provides for payments of \$0.00 for 7

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

### **Creditor's Request for Relief**

In addition to denial of confirmation, the Creditor requests in its "Objection" that attorney's fees be awarded, and the case dismissed.

The "Objection" does not allege any contractual or statutory grounds for such fees. No dollar amount is requested for such fees. No evidence is provided of Creditor having incurred any attorneys' fees or having any obligation to pay attorneys' fees. Based on the pleadings, the court would either: (1) have to award attorneys' fees based on grounds made out of whole cloth, or (2) research all of the documents and California statutes and draft for Creditor's grounds for attorneys' fees, and then make up a number for the amount of such fees out of whole cloth. The court is not inclined to do either.

Similarly, no grounds have been stated for dismissal of the case. In essence, this requested relief is a separate claim that should be sought in a separate motion. Though parties may join multiple claims in an adversary proceeding, with Federal Rule of Civil Procedure 18 being incorporated into Federal Rule of Bankruptcy Procedure 7018, Rule 18 has not been incorporated into bankruptcy contested matters (bankruptcy case motion, objection, application process). FED. R. BANKR. P. 9014(b).

The court does not grant either of these requested relief.

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 Steven Claude Smith (“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.

No other further relief is granted.

24. [18-24449-E-13](#)  
[PPR-1](#)

STEVEN SMITH  
Arasto Farsad

**OBJECTION TO CONFIRMATION OF  
PLAN BY THE BANK OF NEW YORK  
MELLON  
1-21-19 [62]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on January 21, 2019. By the court's calculation, 22 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 -----

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**The Objection to Confirmation of Plan is consolidated with the debtor's Motion To Confirm Amended Plan (Dckt. 55), and the matter is removed from the calendar.**

The Bank of New York Mellon fka The Bank of New York, as Trustee for the Certificate holders of CWABS, Inc., Asset Backed Certificates, Series 2006-SPS2, its assignees and/or successors in interest ("Creditor") holding a secured claim filed an "Objection" on January 21, 2019. Dckt. 62.

Though Creditor filed its Objection, Debtor had already filed and set for hearing a Motion To Confirm Amended Plan. Dckt. 55. The court shall consolidate the Objection to Confirmation with the Motion To Confirm filed by the Debtor.

25. [18-27149-E-13](#)  
[DPC-1](#)

YVONNE ESCOBAR  
Richard Sturdevant

**OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P. CUSICK  
1-16-19 [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).**

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on January 16, 2019. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. 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, Yvonne Escobar ("Debtor"), and her attorney failed to appear at the first meeting of Creditors held on January 10, 2019. The meeting has been continued to March 14, 2019.
- B. Debtor's calculations of Attorney's fees conflict. First, Debtor indicates in the Rights and Responsibilities and Disclosure of Compensation to Attorney Form 2016(b) that attorney's fees total \$4,000, of which \$1,000

was paid prior to filing. However, the plan indicates that attorney's fees total only \$2,000, of which \$1,000 was paid prior to filing. Also, the plan fails to designate whether the balance of attorney fees shall be paid in compliance with LBR 2016-1(c) or if a separate motion will be filed.

## **DISCUSSION**

Trustee's objections are well-taken.

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 the Chapter 13 Trustee and any creditors who appear represents a failure to cooperate. *See* 11 U.S.C. § 521(a)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Furthermore, Debtor indicates in the Rights and Responsibilities and Disclosure of Compensation to Attorney Form 2016(b) that attorney's fees total \$4,000 while the proposed plan indicates that attorney's fees total only \$2,000. Without a clear picture of Debtor's financial situation, the plan does not appear feasible. 11 U.S.C. § 1325(a)(6).

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

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

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

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

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



26. [18-26552-E-13](#)  
[DPC-1](#)

TRACY ARCHIE  
Gerald Glazer

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY DAVID  
P. CUSICK  
11-16-18 [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).**

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on November 16, 2018. By the court's calculation, 32 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 -----

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**The Objection to Confirmation of Plan is ~~overruled~~.**

The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that Debtor failed to attend the Meeting of Creditors on November 15, 2018. Trustee also notes the Debtor's first payment of \$950 will become due on November 25, 2018.

#### **DECEMBER 18, 2018 HEARING**

At the December 18, 2018 hearing the court continued the hearing to 3:00 p.m. on February 12, 2019 to allow the trustee to supplement the record. Dckt. 21.

#### **TRUSTEE'S AMENDED OBJECTION**

Trustee filed an Amended Objection on January 30, 2019. Dckt. 25. Trustee notes Debtor

appeared at the continued Meeting of Creditors and is current in plan payments. However, Trustee asserts the plan relies on the valuation of the claim of Pacific Credit Union where Debtor has yet to file any motion to value collateral. Debtor's counsel advised Trustee at the Meeting of Creditors the claim is not eligible for valuation and therefore the plan would finish in 73 months.

Furthermore, Trustee objects to confirmation because the plan proposes a 0 percent dividend where Debtor has non-exempt equity of \$5,707.27 (based on Debtor's residence being valued at \$276,000(Schedule A/B, Dckt. 1), encumbered by the first deed of trust of Chase in the amount of \$170,292.73 (Schedule D, Dckt. 1), and Debtor having claimed an exemption of \$100,00.00(Schedule C, Dckt. 1)).

## **DEBTOR'S REPLY**

Debtor filed a Reply on February 5, 2019. Dckt. 28. Debtor states Debtor will increase plan payments by \$175.00 beginning March 2019. Debtor further argues that no nonexempt equity remains in the home after considering Chapter 7 Trustee's fees, Chapter 13 Trustee's fees, attorney's fees, and capital gains taxes.

## **DISCUSSION**

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of Pacific Credit Union . Debtor has failed to file a motion to value, and Debtor's counsel admitted on behalf of Debtor that Debtor is unable to value that creditor's collateral. Dckt. 26. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

Debtor proposes increasing plan payments by \$175.00 beginning March 2019 to address the failure to value the claim of Pacific Credit Union. At the hearing, **XXXXXXX**.

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor's plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). Debtor argues that given the Chapter 7 Trustee's fees, Chapter 13 Trustee's fees, attorney's fees, and capital gains taxes, creditors would not receive any of the potential non-exempt \$5,707.27 in equity from the sale of Debtor's residence. Colliers discusses consideration of administrative expenses pursuant to the liquidation analysis:

The determination regarding what property creditors would receive in a liquidation should also take into account the administrative expenses that would be incurred in a chapter 7 case. These expenses may include, in addition to costs of sale, costs such as capital gains taxes incurred by the trustee who disposes of property. In chapter 7, mortgage payments, taxes or other payments on secured debts that are not paid in the period between the petition and the sale may cause an increase in lien amounts that would diminish the amount received upon liquidation of property. These factors may present issues of valuation when the debtor proposes to retain nonexempt property. When the property is sold pursuant to the plan, the amount of the actual net proceeds, less applicable exemptions,

normally determines the amount that must be distributed to creditors.

8 COLLIER ON BANKRUPTCY P 1325.05 [1][d] (16th 2018).

The court agrees that under a Chapter 7 case, creditors would not receive any of Debtor's non-exempt equity.

~~The Plan does comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is overruled, and the Plan 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 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 is overruled, and Tracy Archie's ("Debtor") Chapter 13 Plan filed on October 17, 2018, is confirmed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

27. [15-29455-E-13](#) **EMMA GILL**  
[GG-1](#) **Gerald Glazer**

**MOTION TO MODIFY PLAN**  
**12-18-18 [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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 18, 2018. By the court’s calculation, 56 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

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

Emma Lee Gill (“Debtor”) seeks confirmation of the Modified Plan because Debtor’s income has decreased temporarily after a hip replacement surgery. Dckt. 41. The Modified Plan proposes a reduction in plan payments as follows: \$428 a month for 38 months, followed by \$10 a month for 2 months, then \$500 a month until the plan is paid off. Dckt. 37. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

#### **CHAPTER 13 TRUSTEE’S OPPOSITION**

David Cusick (“the Chapter 13 Trustee”) filed an Opposition on January 28, 2019. Dckt. 45. Chapter 13 Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor's proposed plan and declaration indicate the dividend to unsecured claims will be both 1 percent and 100 percent.
- B. Assuming a dividend of 100 percent, Debtor's plan will take 62 months. Debtor proposes to pay \$10,876.00 over the remaining 24 months. when subtracting the Trustee's fees of \$772.20, the plan would not pay the \$10,803.24 in remaining unsecured claims within 60 months.
- C. Debtor has not filed Supplemental Schedules I and J in support of her current (temporarily reduced) income and expenses. Debtor's most recent filed Schedules were filed in 2015. Circumstances have possibly changed, including the Debtor's mortgage expenses, expenses associated with Debtor's 19 year old dependent son, and employment of only one year.

## **DEBTOR'S REPLY**

Debtor filed a Reply to Trustee's Opposition on February 5, 2019. Dckt. 48. In the Reply, Debtor proposes (1) to specify in the Order Confirming that the plan provides a 100 percent dividend; and (2) that Debtor is willing to pay \$560.00 per month beginning April 2019 to make the plan feasible.

## **DISCUSSION**

The Chapter 13 Trustee's objections are well-taken.

While Debtor seeks to clarify the unsecured claims dividend and proposes an increased payment to make the plan feasible, Supplemental Schedules have still not been filed to show Debtor's updated financial circumstances (Debtor's most recent prior Schedules filed three years ago).

At the hearing, **XXXXXXXXXX**.

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

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by Emma Lee Gill ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

28. [18-27755-E-13](#)  
[DPC-1](#)

MARK/RENEE EVANS  
Peter Macaluso

**OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P. CUSICK  
1-18-19 [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).**

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on January 18, 2019. By the court's calculation, 25 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. Debtors, Mark and Renee Evans ("Debtor"), admitted at the Meeting of Creditors that debtor Mark Evans makes \$58 per hour, where Schedule I reflects a hourly salary of only \$32.91.
- B. Debtor lists businesses United Global, LLC and Big Sky International, Inc., on Statement of Financial Affairs question 27, but fails to report the businesses on Schedule A/B except possibly as an accounts receivable for \$1 and \$25,000 held in trust by attorneys.

- C. Debtor proposes to pay unsecured claims during the first 36 months and student loans in the remaining 24 months. Where Debtor is paying student loans more than general unsecured claims, the plan may unfairly discriminate in violation of 11 U.S.C. § 1322(b)(1).

## **DISCUSSION**

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 proposes a 0.6 percent dividend to unsecured claims, but Debtor admitted at the Meeting of Creditors to receiving greater income than what is report on Schedule I. Dckt. 19. Based on the foregoing, the plan cannot be confirmed.

Furthermore, Debtor lists businesses United Global, LLC and Big Sky International, Inc., on Statement of Financial Affairs question 27, but fails to report the businesses on Schedule A/B. Debtor has not shown the plan passes the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4).

Additionally, the Debtor proposes to pay unsecured claims during the first 36 months and student loans in the remaining 24 months. It is unclear whether Debtor is paying student loans more than general unsecured claims; Debtor has not shown that plan does not unfairly discriminate in violation of 11 U.S.C. § 1322(b)(1).

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

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

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

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

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

29. [18-26358-E-13](#)  
[PGM-1](#)

TANESHIA WRAY  
Peter Macaluso

MOTION TO CONFIRM PLAN  
1-7-19 [53]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 7, 2019. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

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

Taneshia Wray ("Debtor") seeks confirmation of the Amended Plan, which would constitute the first confirmed plan in this case. The Amended Plan provides for \$1,950.00 to be paid up to January 2019, and payments of \$1,950.00 for 57 months starting February 2019 with a 0 percent dividend to unsecured claims which total \$177,876.20. Dckt. 57. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

#### CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on January 29, 2019. Dckt. 76. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor's plan relies on the motion to Value Collateral of Household Finance Corp set to be heard on February 12, 2019. If the Motion is not granted, the plan will not have sufficient monies to pay the claim in full.



- B. Debtor's Amended Schedule A/B lists a wrongful termination claim and a worker's compensation claim both valued at \$1, but does not provide any other additional information.
- C. Debtor is \$1,950.00 delinquent in plan payments, which represents one plan payment.
- D. Debtor's plan proposes \$833.94 per month towards the principal balance of the Bank of New York Mellon's secured claim (\$1,500 total), which would be a 30 year repayment with 0 percent interest. \$1,919.00 is required for a 30 year amortization of \$360,000 at 3.5 percent. Therefore, that creditor may not be adequately protected.

## **DEBTOR'S REPLY**

Debtor filed a Reply to Trustee's Opposition on February 4, 2019. Dckt. 79. In the Reply, Debtor asserts the following:

1. The Motion to Value has not received any opposition and is set for hearing February 12, 2019.
2. Debtor does not know whether the wrongful termination and workers compensation claims will be meritorious; Debtor stipulates to provide any non-exempts recovery into the plan.
3. The adequate protection payment is based on a 31 percent of Debtor's disposable income mortgage payment, derived from the normal loan modification program. Debtor states that Debtor's income is \$2,785.00, of which 31 percent equates to \$863.36 (plus escrow of \$666.06 equals the proposed payment of \$1,529.35). Debtor stipulates to increasing the payment by \$40.00 to include an additional \$29.35 plus trustee fees.

## **DISCUSSION**

Trustee's Opposition is well-taken.

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of Value Collateral of Household Finance Corp. A review of the docket shows that Debtor has filed that Motion and set it for hearing the same day as the hearing on this Motion. Dckt. 64. The court has granted that Motion.

As to Trustee's grounds for opposition based on the adequate protection payment to the Bank of New York Mellon and undisclosed wrongful termination and workers compensation claims, Debtor has stipulated to increasing the adequate protection payment by \$40.00 and committing all non-exempt recovery from wrongful termination and workers compensation claims into the plan.

Still unresolved is Trustee's assertion that Debtor is delinquent. Debtor is \$1,950.00 delinquent in plan payments, which represents one month of the \$1,950.00 plan payment Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

The Amended Plan complies 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 Taneshia Lannette Wray ("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.

30. [18-26358-E-13](#)  
[DPC-1](#)

TANESHIA WRAY  
Peter Macaluso

CONTINUED MOTION TO DISMISS  
CASE  
12-7-18 [44]

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

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Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Office of the United States Trustee on December 7, 2018. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

**The Motion to Dismiss is granted, and the case is dismissed.**

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. The debtor, Taneshia Lannette Wray ("Debtor") is delinquent \$3,040.51 in proposed plan payments;
2. Debtor failed to serve her proposed plan on all interested parties and set a confirmation hearing;
3. Debtor failed to provide the Trustee a copy of her tax transcript or tax return, or a statement that no such documentation exists, for the most recent pre-petition tax year.

#### DEBTOR'S OPPOSITION

Debtor filed an Opposition to the Trustee's Motion on December 21, 2018. Dckt. 51. Debtor states she will file, set, and serve an Amended Plan before the date of the hearing to address the Trustee's Motion.

## **JANUARY 9, 2019 HEARING**

At the January 9, 2019 hearing the court continued the hearing on the Motion to be heard in conjunction with the Motion To Confirm February 12, 2019. Dckt. 62.

## **DISCUSSION**

A review of the docket shows the court has denied the Motion To Confirm set to be heard the same day as the hearing on this Motion. Motion, Dckt. 53. Among the grounds for denying confirmation is Debtor's delinquency of \$1,950.00 in plan payments. See Dckt. 76. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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 Dismiss the Chapter 13 case 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 Motion to Dismiss is granted, and the case is dismissed.

31. [18-25861-E-13](#)  
[MOH-1](#)

MICHAEL SCHILLACI  
Michael Hays

MOTION TO CONFIRM PLAN  
12-26-18 [29]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 26, 2018. By the court's calculation, 48 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.**

Michael Schillaci ("Debtor") seeks confirmation of the Amended Plan, which would constitute the first confirmed plan in this case. The Amended Plan proposes a total of \$2,796.00 paid from October 25, 2018 through December 25, 2018; payments of \$1,180.00 commencing January 25, 2019; and a dividend to unsecured claims of 0 percent. Dckt. 31. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

#### CHAPTER 13 TRUSTEE'S RESPONSE

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response on January 29, 2019. Dckt. 38. Trustee notes that Debtor has eliminated an expense of an additional mortgage payment on Amended Schedule J in the amount of \$229.00. Dckt. 34. However, the plan still provides for the claim

of Chase Home Mortgage to be paid as a Class 4. Amended Plan, Dckt. 31.

Trustee does not oppose confirmation so long as the Order Confirming specifies that the Class 4 claim of Chase Home Mortgage is to be paid \$0.00 through the Trustee.

## **DISCUSSION**

The Amended Plan complies with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is confirmed.

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by Michael Schillaci (“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 26, 2018, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, which includes the reduction of the Class 4 claim of Chase Home Mortgage, transmit the proposed order to David Cusick (“the Chapter 13 Trustee”) for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

32. [18-23567-E-13](#)      TRAVIS/LUCELYN STEVENSON      CONTINUE MOTION TO SELL  
[PSB-2](#)                      Paul Bains                                      12-26-18 [48]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 26 , 2018. By the court’s calculation, 34 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days’ notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days’ notice for written opposition).

The Motion to Sell Property 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). The defaults of the non-responding parties and other parties in interest are entered.

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

The Bankruptcy Code permits Travis Jake Stevenson and Lucelyn Ann Stevenson, Chapter 13 Debtors (“Movant”), to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here, Movant proposes to sell Movant’s its business commonly known as Stevenson’s Care Home, Inc. (the “Business”), in which Movant has a 50 percent interest.

The terms of the sale stated with particularity in the Motion are:

- A. All-cash purchase price of \$220,000.00.
- B. The proposed purchaser of the Business is H&M Senior Living, LLC (the “Buyer”).

On Movant's Schedule A/B, Movant valued its 50 percent interest in the Business at \$150,000.00. Schedule A/B, Dckt. 14. Movant claimed an exemption of \$9,500.00 in the Business. Schedule C, Dckt. 14.

Movant filed as Exhibit A the Purchase Agreement. Dckt. 50. The Purchase Agreement identifies itself as an agreement for the purchase of two residential care facilities for the elderly known as Stevenson's Care, Inc I and Stevenson's Care Home, Inc II. *Id.* at 1. Some of the terms of the Agreement (not stated in the Motion) include:

1. Buyer shall pay Seller by check on October 8, 2018. *Id.*, ¶ 2.
2. The sale includes all appliances, fixtures, decor, and furniture relating to the business; use of the facility names Stevenson's Care, Inc and Stevenson's Care Home, Inc II.; and use of the Business phone numbers. *Id.*, ¶¶ 6-8.
3. All income and expenses of the Business belong to Buyer as of October 1, 2018. *Id.*, ¶ 19.e.

#### **TRUSTEE'S RESPONSE**

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response to the Motion on January 8, 2019. Dckt. 53. Trustee notes that it appears from the Agreement that the transaction already occurred. Trustee argues that the Motion and supporting documents do not show what Debtor intends to do with the net sale proceeds (including how much is to be paid into the plan and when), and that Trustee should be paid directly.

#### **CONTINUED HEARING**

On January 22, 2019 the Movant filed an application to continue the hearing. On January 25, 2019, the court issued an Order continuing the hearing to February 12, 2019. Order, Dckt. 57.

#### **MOVANT'S SUPPLEMENTAL RESPONSE**

Movant filed a Supplemental Response in support of the Motion on February 6, 2019. Dckt. 61. The Response states the following:

1. Movant is aware court approval is necessary for the sale of the Business and hopes the court will "ratify the sale."
2. Movant netted \$57,500.00 as its share from the sale.
3. Movant is holding the funds for court approval.
4. Movant is planning a Modified Plan which would include a lump sum



payment into the plan “ASAP.” The lump sum would allow the plan to complete in 40 months.

5. Exhibit B is an updated budget for Movant’s finances “if this sale is approved.”

**DISCUSSION**

The present Motion is best described as an after thought. In early October 2019, Movant entered into and executed an Agreement for the sale of the Business for \$220,000.00. Exhibit A, Dckt. 50 at ¶ 2. No evidence was presented as to how long Movant had been seeking to sell the Business, or what efforts were made to value the business and seek a fair market price. Movant previously valued its 50 percent interest at \$150,000.00. Schedule A/B, Dckt. 1.

Movant describes the Business as “Stevenson’s Care Home, Inc.” Dckt. 48. However, the purchase Agreement indicates the sale was for two businesses: Stevenson’s Care, Inc I and Stevenson’s Care Home, Inc II. Exhibit A, Dckt. 50. No evidence was presented as to what assets are included in the Business. The Agreement contemplates there being appliances, fixtures, decor, and furniture relating to the business, in addition to the business name (and associated good will) and phone numbers. *Id.* ¶¶ 6-8.

**Asset to be Sold Not Listed On Schedules**

On Schedule A/B Debtor lists personal property assets, under penalty of perjury, which include the following:

Ellie’s Senior Care Home, Inc.....100% Ownership.....	\$150,000
Stevenson’s Care Home, Inc..... 50% Ownership.....	\$150,000

Schedule A/B, Question 10; Dckt. 14 at 6. No creditors are listed on Schedule D as having a lien against either of these ownership interests.

Thus, the two interest purported to be sold, “Stevenson’s Care, Inc. I and “Stevenson’s Care Home, Inc. II” are not listed on the Schedules.

**Review of Information From Secretary of State**

Concerned about the identification of assets of the Estate and what the court could be ordering sold, the court checked the California Secretary of State website for California corporations and limited liability companies.

When a corporate search was made for “Stevenson’s Care Home, Inc.,” no such corporation was listed by the Secretary of State. When the court shortened the name to “Stevenson’s” one corporation was disclosed: “Stevenson’s Care, Inc. <sup>FN. 1</sup> The Secretary of State lists a “Marri Stevenson” as the agent for service of process. For the July 20, 2017 Statement of Information, the following officers and directors are listed: Travis Stevenson, CEO; Lucelyn Stevenson, Secretary; Chad

Stevenson, CFO; Marri Stevenson, Director; and Travis Stevenson, Director. The Statement of Information filed on April 27, 2018, states that there has been no change since the July 20, 2017 Statement.

As one sees, the two Debtors in this case are the CEO, Secretary, and one of the Directors – of Stevenson’s Care, Inc.

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FN. 1.

<https://businesssearch.sos.ca.gov/CBS/SearchResults?filing=False&SearchType=CORP&SearchCriteria=stevenson%27s&SearchSubType=Keyword>  
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The court is not sure what shares in what corporation were purchased by H&M Senior Living, LLC in “Stevenson’s Care Inc. I and Stevenson’s Care Inc. II, but they appear to be entities which are not formed under the laws of the State of California and have not registered to do business in California.

**Agreement to Buy/Sell**

The Agreement provides for the Buyer to pay Movant by check on October 8, 2018. *Id.* Movant filed this Motion on December 26, 2018. Dckt. 48. Movant being silent on the issue, the court presumes the transaction (having been signed and executed) was completed long before the Motion seeking approval of sale was filed, the monies going to Movant and Movant’s business partners. The Buyer is entitled to all Movant’s income (property of the Estate) from October 1, 2019 and thereafter. *Id.*, ¶ 19.e.

No specific financial information is provided as to the sale. The court is told in Movant’s Supplemental Response that Movant netted \$57,500.00 from the sale. Dckt. 61. The court is left to guess how Movant arrived at this net value given the sale price of the Business was \$220,000.00 and Movant’s interest was 50 percent. Movant does not describe any costs associated with the sale, if any.

Movant has not provided a specific plan of action with respect to the proceeds of the sale. Movant’s Supplemental Response suggests a Modified Plan will be presented which will provide a (unspecified) lump sum, that the lump sum will be made “ASAP,” and that the lump sum will allow Movant to complete the plan 20 months early.

Movant’s request for relief is that the court approve and “ratify” the sale. However, the sale has already occurred. What Movant actually seeks is retroactive approval. No legal argument has been presented establishing the court’s authority to grant retroactive relief here.

Movant states under penalty of perjury that Movant is aware court approval is necessary for the sale. Despite this, Movant has already executed the Agreement, accepted funds, and sold without notice and a hearing property of the Estate.

At the hearing, **XXXXXXXXXXXXXX**.

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

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

The Motion to Sell Property filed by Travis Jake Stevenson and Lucelyn Ann Stevenson, the Chapter 13 Debtors (“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 **XXXXXXXXXXXXXX**.

33. [18-24772-E-13](#)  
[RAI-3](#)

NICOLE JACKSON  
Rafael Icaza

MOTION TO CONFIRM PLAN  
1-4-19 [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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 8, 2019. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

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

Nicole M. Jackson ("Debtor") seeks confirmation of the Amended Plan, which would be Debtor's first confirmed plan. The Amended Plan provides for payments of \$332.22 per month for 2 months, \$364.37 for 31 months, \$200.00 in month 5, and \$114.67 in months 6-15. Dckt. 75. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

#### CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on January 29, 2019. Dckt. 83. Trustee opposes confirmation of the Plan on the following basis:

- A. Debtor is \$1,568.59 delinquent in plan payments.

- B. Debtor is under the median income and has proposed a 33 month plan, while proposing only a 30 percent dividend to the unsecured claims. Trustee believes the plan term should be 36 months.

## DISCUSSION

The Chapter 13 Trustee's objections are well-taken.

Debtor is \$1,568.59 delinquent in plan payments. 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 Chapter 13 Trustee alleges that the Plan violates 11 U.S.C. § 1325(b)(1), which provides:

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

Debtor proposes a 30 percent dividend to the unsecured creditors, but proposes to complete the plan in 33 months. Trustee argues the plan term should be at least 36 months. The court agrees.

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 Nicole M. Jackson ("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.

34. [18-27372-E-13](#) **DUANE OTT**  
[MSK-1](#) **Marc Voisenat**

**OBJECTION TO CONFIRMATION OF  
PLAN BY CARRINGTON MORTGAGE  
SERVICES, LLC**  
1-17-19 [26]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, and Office of the United States Trustee on January 17, 2019. By the court’s calculation, 26 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 -----

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

Carrington Mortgage Services, LLC (“Creditor”) holding a secured claim opposes confirmation of the Plan on the basis that:

- A. Debtor’s proposed plan understates the pre-petition arrears to be \$12,547.00 where the amount in default as of filing was actually \$37,853.92.

- B. Debtor's Schedules I and J reflect a net income of \$2,912.54. Where Debtor's proposed plan payment is \$2,912.38, the plan is not feasible because Debtor cannot make the increased payments required to cure Creditor's arrears.

On January 22, 2019, Creditor filed Proof of Claim, No. 6. Creditor asserts a secured claim in the amount of \$265,648.72 and arrears of

## **DISCUSSION**

Creditor's objections are well-taken.

Creditor's Proof of Claim asserts the amount of its claim in default as of filing was actually \$37,853.92. Where Debtor's proposed plan provides for arrears of only \$12,547.00 to Creditor as a Class 1, the plan is not feasible unless Debtor objects to Creditor's claim. A review of the docket shows no objection having been filed.

Furthermore, Debtor's Schedules I and J reflect a net income of \$2,912.54. After accounting for the proposed plan payment of \$2,912.38, Debtor would have only \$0.16 to put towards the increased plan payment required to provide for the greater arrears owed to Creditor.

Based on the foregoing, the plan is not feasible. 11 U.S.C. § 1325(a)(6). The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is sustained, and the Plan is not confirmed.

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

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

The Objection to the Chapter 13 Plan filed by Carrington Mortgage Services, LLC ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

35. [18-20473-E-13](#)  
[PGM-2](#)

PATRICIA DI GRAZIA  
Peter Macaluso

MOTION TO CONFIRM PLAN  
1-5-19 [\[132\]](#)

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 5, 2019. By the court's calculation, 38 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

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

Patricia Frances Di Grazia ("Debtor") seeks confirmation of the Amended Plan which would constitute the first confirmed plan in this case. The Amended Plan provides for payment of \$8,709.97 through December 2018, and payments of \$1,830.00 starting January 2019 and for the remainder of the plan term. Dckt. 136. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

#### CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on January 29, 2019. Dckt. 143. Trustee states Debtor's Declaration in support of the Motion states both that Debtor is moving into the "Bryan home" and that the plan is partially supported by rental income. Trustee notes further that Debtor's Amended Schedule I (Dckt. 137) no longer lists any rental income where it was previously \$1,800.00.



Trustee argues that based on the foregoing, Debtor's Declaration is not accurate.

## **DEBTOR'S REPLY**

Debtor filed a Reply on February 4, 2019. Dckt. 147. Debtor states that it was a mistake to reference rental income in the Declaration, and that Debtor has filed an Amended Declaration.

The Amended Declaration filed February 4, 2019, removes the reference to rental income. Dckt. 148 at ¶ 13.

## **DISCUSSION**

Debtor has clarified that the Declaration filed in support of the Motion (Dckt. 134) mistakenly referenced rental income. Debtor has moved into the "Bryan home" and filed Amended Schedule I to reflect not receiving rental income. Dckts. 134, 137. Debtor has now clarified the mistake with an Amended Declaration. Dckt. 148.

The Amended Plan complies with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is confirmed.

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by Patricia Frances Di Grazia ("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 January 5, 2019, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick ("the Chapter 13 Trustee") for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

36. [18-24173-E-13](#)  
[PGM-3](#)

FERRIC/STACY COLLONS  
Peter Macaluso

CONTINUED MOTION TO CONFIRM  
PLAN  
11-12-18 [108]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on November 12, 2018. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

**The Motion to Confirm the Amended Plan is denied, and the plan is not confirmed.**

Ferric Jason Collons and Stacy Christine Collons ("Debtor") seek confirmation of the Amended Plan, which would be the first confirmed plan in this case. The Amended Plan provides for \$1,650 to be paid through November 2018, 21 payments of \$930 starting December 2018, and 35 payments of \$2,200 for the remainder of the Plan. Dckt. 111. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

## **CHAPTER 13 TRUSTEE'S OPPOSITION**

David Cusick (“the Chapter 13 Trustee”) filed an Opposition on December 3, 2108. Dckt. 118. Trustee opposes the Motion on the basis that the proposed plan relies on a Motion to Value Collateral of Wells Fargo (Dckt. 69) set to be heard December 11, 2018. Trustee further opposes the Motion because Debtor deducts \$620 in expenses for storage units, which Trustee is not certain are necessary expenses.

## **CREDITOR'S WELLS FARGO'S OPPOSITION**

Wells Fargo Bank, N.A., dba Wells Fargo Dealer Services (“Creditor”) filed an Opposition on December 4, 2018. Dckt. 122. Creditor opposes the Motion on the grounds that the valuation of its collateral is too low, the proposed plan does not provide an adequate protection payment, and the proposed plan provides only a 4 percent interest rate.

Creditor requests the Motion be denied, or the Contested Matter be set for evidentiary hearing as Creditor does not consent to Federal Rule of Civil Procedure 43(c).

## **CREDITOR RANCHO MURIETA'S OPPOSITION**

Creditor Rancho Murieta Airport, Inc. (“RMA”) filed an Opposition on December 4, 2018. Dckt. 126. RMA opposes the Motion on the basis Debtor’s plan seeks assumption of its executory contract where Debtor has significant pre- and post-petition debts, does not propose to cure arrears before assumption. RMA also asserts the plan is not feasible in light of the significant post-petition defaults.

## **DEBTOR'S REPLY**

Debtor filed a Reply on December 11, 2018. Dckt. 131. Debtor notes the hearing on the Motion to Value (Dckt. 69) was continued to January 15, 2018, at 3:00p.m. *See* Order, Dckt. 130.

## **DECEMBER 18, 2018 HEARING**

Noting that the proposed Amended Plan relies on the outcome of a Motion To Value collateral of Creditor, the court continued the hearing on this Motion to January 15, 2018, at 3:00p.m. to be heard alongside the Motion to Value. Order, Dckt. 136.

## **JANUARY 15, 2019 HEARING**

At the January 15, 2019 hearing Debtor requested a continuance, which the other Parties did not oppose, to allow Debtor the opportunity to prosecute the pending Motion to Value. The court continued the hearing to February 12, 2019.

## **DISCUSSION**

Trustee and Creditor's oppositions are well-taken.

A review of the Docket shows Debtor's Motion to Value Creditor's collateral was heard the same day as the hearing on this Motion, and it was determined that Creditor's claim was oversecured, the collateral having a value of \$30,227.67 (not the \$20,000 advocated by Debtor) and Creditor's secured claim was \$25,222.13. Without the court valuing the claim at Debtor's lower amount, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

The Motion to Confirm the Amended Plan is denied, and the plan is not confirmed.

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by Ferric Jason Collons and Stacy Christine Collons ("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 plan is not confirmed.

37. [19-20477-E-13](#) DANIEL ARANA  
[MS-1](#) Mark Shmorgan

**MOTION TO EXTEND AUTOMATIC  
STAY  
1-26-19 [8]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 26, 2019. By the court’s calculation, 24 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, -----

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

Daniel Arana (“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. 17-24936) was dismissed on September 5, 2018, after Debtor defaulted in plan payments. *See* Order, Bankr. E.D. Cal. No. 17-24936, Dckt. 33, September 5, 2018. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous

case was dismissed because Debtor had lost his job and by the time regained employment the delinquency was too great to even propose a modified plan. Dckt. 10, ¶ 6. Debtor now has steady employment. *Id.*, ¶ 7.

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

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

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

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

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

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

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

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

The Motion to Extend the Automatic Stay filed by Daniel Arana

(“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

38. [17-27692-E-13](#)      **ELIZABETH MANZO**      **MOTION TO CONFIRM PLAN**  
[PLC-7](#)                      **Peter Cianchetta**                      **12-28-18 [133]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 28, 2018. By the court’s calculation, 46 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

**The Motion to Confirm the Amended Plan is ~~XXXXXXX~~.**

Elizabeth Lopez Manzo (“Debtor”) seeks confirmation of the Amended Plan, which would constitute the first confirmed plan in this case. The Amended Plan provides for \$8,190.00 to be paid as of December 28, 2018, and for payments of \$630.00 per month commencing January 25, 2019. Dckt. 136. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

## **CHAPTER 13 TRUSTEE’S OPPOSITION**

David Cusick (“the Chapter 13 Trustee”) filed an Opposition on January 29, 2019. Dckt. 143.

The Chapter 13 Trustee opposes Debtor’s motion for the following reasons:

- A. The Plan is based upon a plan form that is no longer effective now that the court has adopted a new plan form as of December 1, 2017. Use of the prior plan form is a violation of Federal Rule of Bankruptcy Procedure 3015.1 and General Order 17-03.
- B. Debtor misclassified the Class 2 claim of Esteban Cardiel in the amended plan. On December 12, 2018, the court issued an order authorizing the sale of real property at 1319 Lord St, Walnut Grove, CA for \$28,000. The proceeds of the sale are to be paid to Esteban Cardiel from escrow. Therefore the claim should be provided in Class 4 as paid outside of the plan. The Trustee has not received a final closing statement, showing that Esteban Cardiel has received funds.

## **DEBTOR’S REPLY**

Debtor filed a Reply to Trustee’s Opposition on February 6, 2019. Dckt. 150. Debtor states the correct Plan Form is being filed concurrently with the Reply, and contains no changes to treatment of creditors through the plan. Debtor states further that the Class 2 debt of Esteban Cardiel has been withdrawn.

## **DISCUSSION**

On January 24, 2019, a Notice That Proof Of Claim No. 2 Has Been Satisfied was filed indicating the claim of Esteban Cardiel has been satisfied in full.

Furthermore, a review of the docket shows Debtor filed an Amended Plan on February 6, 2019 using the Form effective December 1, 2017. Dckt. 149.

At the hearing, **XXXXXXX**.

**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 Elizabeth Lopez Manzo (“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 February 6, 2019, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick (“the Chapter 13 Trustee”) for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

39. [18-27699-E-13](#)      **WALTER ZWALD AND CYNTHIA MOTION TO SELL**  
[DBJ-1](#)                      **RAITT-ZWALD**    **1-3-19 [14]**  
                                    **Douglas Jacobs**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 3, 2019. By the court’s calculation, 40 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days’ notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days’ notice for written opposition).

The Motion to Sell Property 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). The defaults of the non-responding parties and other parties in interest are entered.

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

The Bankruptcy Code permits Walter Andrew Zwald and Cynthia Ann Raitt-Zwald, the Chapter 13 Debtor (“Movant”), to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here, Movant proposes to sell the real property described as vacant land on Highway 45, Colusa, California AP # 015-310-050 (“Property”).

The terms of the sale are:

- A. Purchase price of \$329,000.00.
- B. The proposed purchasers of the Property is Allah and Kami Bath (“Buyer”).

C. Close of escrow shall be 45 days after acceptance.

Exhibit B, Dckt. 17.

### **TRUSTEE'S RESPONSE**

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response to the Motion on January 16, 2019. Dckt. 21. Trustee states he does not oppose the Motion, but notes the Motion requests the Property be sold free and clear of the liens of the County of Colusa, IRS, and EDD and requests that those liens either be paid through the Trustee or directly through escrow with no proceeds going directly to Debtor. Trustee states he is prepared to pay his check into the escrow at the same time the escrow meets his demand.

### **DEBTOR'S REPLY TO TRUSTEE'S RESPONSE**

Debtor filed a Reply to Trustee's Motion on January 22, 2019. Dckt. 33. Debtor agrees with Trustee that the liens of the County of Colusa, IRS, and EDD should be paid through escrow and requests the order allowing sale address the issue.

### **CREDITOR'S OPPOSITION**

Creditor DSD Financial, Inc., a California Corporation ("Creditor DSD") filed a Partial Opposition on January 29, 2019. Dckt. 41. Creditor opposes the Motion to the extent it seeks to pay remaining proceeds (after satisfying senior liens and costs of sale) to the Trustee. Creditor DSD asserts it should receive the remaining proceeds to satisfy its judgement lien in the amount of \$227,945.14. *See* Proof of Claim, No. 8.

Creditor DSD argues that without its consent, there is no basis for granting the sale free and clear of liens.

### **DEBTOR'S REPLY TO CREDITOR'S OPPOSITION**

Debtor filed a Reply to Creditor's Partial Opposition on February 5, 2019. Dckt. 43. Debtor replies that Debtor does not oppose the court accepting overbids, and does not oppose the proceeds of sale remaining after senior liens of the IRS and EDD are satisfied be put towards Creditor's claim.

### **DISCUSSION**

Debtor's Motion starts simply enough. Debtor seeks court authorization pursuant to 11 U.S.C. § 363(b) to sell real property on Highway 49 for \$329,000. Then, the Motion begins a little slippage downhill.

Debtor throws in that Debtor seeks an order to pay a real estate commission, in some unstated amount/percentage, “as appropriate.” This unspecified real estate commission is to be paid through escrow.

The Motion gets back on track, requesting that the tax liens owed to the County of Colusa, the Internal Revenue Service, and the California EDD be paid from the proceeds, and the balance of the funds be distributed to the Chapter 13 Trustee to be paid to creditors as provided in the Chapter 13 Plan.

No request is made in the Motion for a sale free and clear of liens pursuant to 11 U.S.C. § 363(f), but only a garden variety sale pursuant to 11 U.S.C. § 363(b).

Creditor DSD asserts that it has a claim secured by the property to be sold based on a recorded abstract of judgment. Opposition, Dckt. 41. Creditor DSD directs the court to its Proof of Claim No. 8 filed in this case. Exhibit B to Proof of Claim No. 8 is a copy of an Abstract of Judgment, which lists Creditor DSD as the judgment creditor and Andrew Zwald, aka Walter Andrew Zwald (one of the debtors in this case), as the judgment Debtor for a \$174,133.86 judgment. In the upper right hand corner of the Abstract of Judgment is a County Recorder’s stamp stating that the Abstract was recorded on September 27, 2015.

In the Chapter 13 Plan, which has not been confirmed in this case, Debtor lists Creditor DSD in Class 2, with its claim to be valued at \$0.00 based on the value of its collateral. Plan ¶ 3.08, Class 2(C); Dckt. 5. On Schedule D Debtor lists Creditor DSD as having a judgment lien on the Highway 49 Property (stated to have a value of \$375,000), but asserts that it has no value as collateral due to the Internal Revenue Service secured claim of \$375,000 and California EDD secured claim of \$23,000,

The Purchase and Sales Agreement states the sale price is \$329,000. Exhibit B, Dckt. 17 at 3. The escrow fees and title insurance costs are to be split 50/50. Agreement, ¶ 7C. For round numbers, assume those costs to be 1.5%, or approximately (\$4,935).

The court has read through the dense, form contract provisions of the Purchase Agreement and could not identify any provision for payment of a real estate commission.

Adding an extra 1.5% for Debtor’s expenses as seller, the court rounds up to sales costs of (\$10,000). From a \$329,000 sale, there would be \$319,000 to disburse to creditors holding secured claims. The Internal Revenue Service has filed Proof of Claim No. 7-1, asserting a secured claim of (\$310,654.04).

The California EDD claim has been filed Proof of Claim No. 3-1 asserting a \$22,579.97 claim, but does not assert that it is secured. In Proof of Claim No. 3-1 the California EDD expressly states that the claim is not secured. Proof of Claim No. 3-1, ¶ 9.

However, the California Franchise Tax Board has filed Proof of Claim No. 2-1 asserting a \$28,487.45 secured claim. It appears that the Motion may just have misidentified the California taxing agency with the secured claim. Attached to Proof of Claim No. 2-1 is a statement that the Notice of Tax Lien was recorded on November 29, 2016 in the county of Butte, California.

For the Internal Revenue Service, an attachment to Proof of Claim No. 7-1 lists recording dates for various federal tax liens, some of which date back to 2009, with others as late as June 2016.

### **Approval of Sale**

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because it allows Movant to satisfy significant claims for taxes which are secured by the Property.

### **Broker's Fee**

Movant requests the court approve the payment of real estate commission to Buyer's real estate broker. The Motion states the commission is "To be paid from escrow." Dckt. 14, at 2:25. However, the amount of the commission is not stated.

At the hearing, **XXXXXX**.

### **Request for Waiver of Fourteen-Day Stay of Enforcement**

Federal Rule of Bankruptcy Procedure 6004(h) stays an order granting a motion to sell for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court, but does not state grounds for the requested relief.

Movant has not pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 6004(h), and this part of the requested relief is not 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 Sell Property filed by Walter Andrew Zwald and Cynthia Ann Raitt-Zwald, the 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 Walter Andrew Zwald and Cynthia Ann Raitt-Zwald, the Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Allah and Kami Bath ("Buyer"), the Property described as Highway

45, Colusa, California AP # 015-310-050 (“Property”), on the following terms:

- A. The Property shall be sold to Buyer for \$329,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit B, Dckt. 17, and as further provided in this Order.
- B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.
- C. The Chapter 13 Trustee is authorized to execute any and all documents reasonably necessary to effectuate the sale.
- ~~D. The Chapter 13 Trustee is authorized to pay a real estate broker’s commission in an amount equal to xx percent of the actual purchase price upon consummation of the sale. The xx percent commission shall be paid to XXXXXXXX.~~
- E. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Chapter 13 Debtor. Within fourteen days of the close of escrow, the Chapter 13 Debtor shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow.

**IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 6004(h) is not waived for cause.

40. [18-27699-E-13](#) **WALTER ZWALD AND CYNTHIA** **OBJECTION TO CONFIRMATION OF**  
[DPC-1](#) **RAITT-ZWALD** **PLAN BY DAVID P. CUSICK**  
**Douglas Jacobs** **1-16-19 [23]**

**Final Ruling: No appearance at the February 12, 2019 Hearing is required.**

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor’s Attorney on January 16, 2019. By the court’s calculation, 27 days’ notice was provided. 14 days’ notice is required.

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

Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion. The defaults of the non-responding parties in interest are entered.

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

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

- A. The proposed plan relies on Debtor’s Motion to Sell.
- B. Debtor’s proposed plan and Schedules fail to provide for the secured claim of County of Colusa, secured by tax liens.
- C. Debtor’s proposed plan relies on the avoiding the judicial lien of DSD Financial, amounting to \$230,000.00. However, no motion has been filed.

## **DEBTOR'S NON-OPPOSITION**

Debtor filed a Response on January 22, 2019 indicating that the proposed plan is not confirmable and that a new plan will be filed. Dckt. 35.

## **DISCUSSION**

Debtor does not oppose Trustee's Objection. 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.



41. [18-27699-E-13](#) **WALTER ZWALD AND CYNTHIA** **OBJECTION TO CONFIRMATION OF**  
[MG-1](#) **RAITT-ZWALD** **PLAN BY DSD FINANCIAL, INC.**  
**Douglas Jacobs** **1-17-19 [27]**

**Final Ruling: No appearance at the February 12, 2019 Hearing is required.**

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 17, 2019. By the court’s calculation, 26 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.

Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion. The defaults of the non-responding parties in interest are entered.

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

DSD Financial, Inc. (“Creditor”) holding a secured claim opposes confirmation of the Plan on the basis that:

- A. Debtor’s plan would need to propose payments of \$4,333.33 for a feasible 100 percent plan. Debtor’s Schedules do not reflect an ability to make the necessary payments.
- B. Under a Chapter 7 case, Creditor estimates \$121,115.00 would be disbursed to unsecured claims, where only \$37,500.00 is provided through the proposed plan.

C. Debtor has grossly undervalued Debtor's residence.

### **DEBTOR'S NON-OPPOSITION**

Debtor filed a Response on January 22, 2019 indicating that the proposed plan is not confirmable and that a new plan will be filed. Dckt. 35.

### **DISCUSSION**

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 DSD Financial, Inc. ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

42. [18-27799-E-13](#) **WILLIAM/MARY CARTER** **OBJECTION TO CONFIRMATION OF**  
[DJD-1](#) **Yasha Rahimzadeh** **PLAN BY VW CREDIT, INC.**  
**1-29-19 [24]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and Chapter 13 Trustee on January 29, 2019. 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 -----

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

VW Credit, Inc. ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that Debtor's proposed plan does not provide for Creditor's secured claim.

Creditor's objections are well-taken.

Creditor asserts a claim of \$22,412.43 in this case. Proof of Claim, No. 7. Debtor's Schedule D does not list Creditor's claim; the 2017 Volkswagen Jetta Sedan securing Creditor's claim is not listed on Debtor's Schedule A/B; and Creditor's claim is not provided for in the proposed plan. Dckts. 1, 2.

11 U.S.C. § 1322(a) is the section of the Bankruptcy Code that specifies the mandatory provisions of a plan. It requires only that a debtor adequately fund a plan with future earnings or other future income that is paid over to Trustee (11 U.S.C. § 1322(a)(1)), provide for payment in full of priority claims (11 U.S.C. § 1322(a)(2) & (4)), and provide the same treatment for each claim in a particular class (11 U.S.C. § 1322(a)(3)). Nothing in § 1322(a) compels a debtor to propose a plan that provides for a secured claim, however.

11 U.S.C. § 1322(b) specifies the provisions that a plan may include at the option of the debtor. With reference to secured claims, the debtor may not modify a home loan but may modify other secured claims (11 U.S.C. § 1322(b)(2)), cure any default on a secured claim—including a home loan—(11 U.S.C. § 1322(b)(3)), and maintain ongoing contract installment payments while curing a pre-petition default (11 U.S.C. § 1322(b)(5)).

If a debtor elects to provide for a secured claim, 11 U.S.C. § 1325(a)(5) gives the debtor three options:

- A. Provide a treatment that the debtor and creditor agree to (11 U.S.C. § 1325(a)(5)(A)),
- B. Provide for payment in full of the entire claim if the claim is modified or will mature by its terms during the term of the Plan (11 U.S.C. § 1325(a)(5)(B)), or
- C. Surrender the collateral for the claim to the creditor (11 U.S.C. § 1325(a)(5)(C)).

Those three possibilities are relevant only if the plan provides for the secured claim, though.

When a plan does not provide for a secured claim, the remedy is not denial of confirmation. Instead, the claimholder may seek termination of the automatic stay so that it may repossess or foreclose upon its collateral. The absence of a plan provision is good evidence that the collateral for the claim is not necessary for the debtor's rehabilitation and that the claim will not be paid. This is cause for relief from the automatic stay. *See* 11 U.S.C. § 362(d)(1).

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

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 VW Credit, Inc. (“Creditor”) holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

43. [18-27799-E-13](#) **WILLIAM/MARY CARTER** **OBJECTION TO CONFIRMATION OF**  
[DPC-1](#) **Yasha Rahimzadeh** **PLAN BY DAVID P. CUSICK**  
**1-22-19 [20]**

**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 22, 2019. 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. Debtors, William and Mary Carter (“Debtor”) admitted at the 341 Hearing that Mr. Carter has been employed, but his employment is seasonal, so his wages as an electrician fluctuate. Furthermore, his income is not identified on Schedules I or J. Debtor has not provided

sufficient evidence to show Debtor's income is not significantly higher than stated.

- B. Debtor failed to provide proof of identity at the First Meeting of Creditors held on January 17, 2019. The meeting has been continued to January 31, 2019.

Trustee's objections are well-taken.

The Chapter 13 Trustee alleges that the Plan violates 11 U.S.C. § 1325(b)(1), which provides:

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

The Plan proposes to pay a 0.3 percent dividend to unsecured claims, which total \$82,125.46, though Debtor's projected disposable income under 11 U.S.C. § 1325(b)(2) appears significantly higher than stated, with Debtor not listing any income from his as-needed electrician work. Thus, the court may not approve the Plan.

Furthermore, Debtor did not verify Debtor's identity 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, verify identity, and be questioned by the Chapter 13 Trustee and any creditors who appear represents a failure to cooperate. *See* 11 U.S.C. § 521(a)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

The 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.

44. [17-22333-E-13](#)  
[LBG-301](#)

THOMAS WARREN  
Lucas Garcia

MOTION TO APPROVE NOMINATION  
OF DEBTORS REPRESENTATIVE  
1-29-19 [\[52\]](#)

**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).**

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on January 29, 2019. By the court’s calculation, 14 days’ notice was provided. 14 days’ notice is required.

The Motion To Approve Nomination Of Debtor’s Representative 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.

<p><b>The Motion To Approve Nomination Of Debtor's Representative is <b>XXXXXX</b>.</b></p>
---

The Debtor, Thomas Edward Warren (“Debtor”) filed the present Motion To Approve Nomination Of Debtor’s Representative seeking an order approving Debtor’s sister, Susan Rose (“Sister”), to be a representative for the Estate pursuant to Federal Rule of Bankruptcy Procedure 1016.

Debtor’s Motion states the following grounds with particularity:

1. Debtor filed this case April 7, 2017. Dckt. 51, ¶ 1.
2. At filing Debtor was under IHSS care with a caregiver but was capable of understanding and personally signing all documents for the filing of his case. *Id.* at ¶ 2.



3. After a dispute with his caregiver, Debtor was arrested and released to Sister. *Id.* at ¶¶ 3-4.
4. Sister perceived Debtor's mental state deteriorated, with Debtor having memory lapse and failure to recognize his surroundings. *Id.* at ¶ 5.
5. After discussions with Sister, Debtor determined Sister should be his caregiver and signed a power of attorney. *Id.* at ¶ 6.
6. Due to Debtor's mental deterioration, the best interests of the parties will be served by appointing Sister as a representative pursuant to Rule 1016. *Id.* at ¶¶ 7-8.

The Motion is supported by the Declaration of Susan Rose. Dckt. 54. The Rose Declaration states under penalty of perjury that Debtor's mental health has deteriorated; that she was concerned through fall 2018 Debtor was unable to care for himself physically, financially, and legally; but also that Debtor, an unnamed attorney, and Sister determined Debtor had capacity to sign a durable power of attorney.

A copy of the power of attorney filed as an Exhibit indicates it was executed September 27, 2018. Dckt. 55.

## **APPLICABLE LAW**

### **Substitution Based on Incompetency**

Where a Debtor is incompetent in a Chapter 13 case, if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred. FED. R. BANKR. P. 1016. Federal Rule of Civil Procedure 25, providing for substitution for incompetency, applies in adversary proceedings and contested matters. FED. R. BANKR. P. 7025, 9014(c). In relevant part, the Federal Rules of Civil Procedure provide:

(b) Incompetency. If a party becomes incompetent, the court may, on motion, permit the action to be continued by or against the party's representative. The motion must be served as provided in Rule 25(a)(3).

Fed. R. Civ. P. 25.

### **Applicable Federal Law To Determine Legal Competency Of Party**

California Probate Code §§ 810 et seq.

#### **§ 810. Legislative findings and declarations regarding legal capacity**

(a) For purposes of this part, there shall exist a rebuttable presumption affecting the burden of proof that all persons have the capacity to make decisions and to be responsible for their acts or decisions.

(b) A person who has a mental or physical disorder may still be capable of contracting, conveying, marrying, making medical decisions, executing wills or trusts, and performing other actions.

(c) A judicial determination that a person is totally without understanding, or is of unsound mind, or suffers from one or more mental deficits so substantial that, under the circumstances, the person should be deemed to lack the legal capacity to perform a specific act, should be based on evidence of a deficit in one or more of the person's mental functions rather than on a diagnosis of a person's mental or physical disorder.

### **§ 811. Unsound mind or incapacity**

(a) A determination that a person is of unsound mind or lacks the capacity to make a decision or do a certain act, including, but not limited to, the incapacity to contract, to make a conveyance, to marry, to make medical decisions, to execute wills, or to execute trusts, shall be supported by evidence of a deficit in at least one of the following mental functions, subject to subdivision (b), and evidence of a correlation between the deficit or deficits and the decision or acts in question:

(1) Alertness and attention, including, but not limited to, the following:

(A) Level of arousal or consciousness.

(B) Orientation to time, place, person, and situation.

(C) Ability to attend and concentrate.

(2) Information processing, including, but not limited to, the following:

(A) Short- and long-term memory, including immediate recall.

(B) Ability to understand or communicate with others, either verbally or otherwise.

(C) Recognition of familiar objects and familiar persons.

(D) Ability to understand and appreciate quantities.

(E) Ability to reason using abstract concepts.

(F) Ability to plan, organize, and carry out actions in one's own rational self-interest.

(G) Ability to reason logically.

(3) Thought processes. Deficits in these functions may be demonstrated by the presence of the following:

(A) Severely disorganized thinking.

(B) Hallucinations.

(C) Delusions.

(D) Uncontrollable, repetitive, or intrusive thoughts.

(4) Ability to modulate mood and affect. Deficits in this ability may be demonstrated by the presence of a pervasive and persistent or recurrent state of euphoria, anger, anxiety, fear, panic, depression, hopelessness or despair, helplessness, apathy or indifference, that is inappropriate in degree to the individual's circumstances.

(b) A deficit in the mental functions listed above may be considered only if the deficit, by itself or in combination with one or more other mental function deficits, significantly impairs the person's ability to understand and appreciate the consequences of his or her actions with regard to the type of act or decision in question.

(c) In determining whether a person suffers from a deficit in mental function so substantial that the person lacks the capacity to do a certain act, the court may take into consideration the frequency, severity, and duration of periods of impairment.

(d) The mere diagnosis of a mental or physical disorder shall not be sufficient in and of itself to support a determination that a person is of unsound mind or lacks the capacity to do a certain act.

(e) This part applies only to the evidence that is presented to, and the findings that are made by, a court determining the capacity of a person to do a certain act or make a decision, including, but not limited to, making medical decisions. Nothing in this part shall affect the decision making process set forth in Section 1418.8 of the Health and Safety Code, nor increase or decrease the burdens of documentation on, or potential liability of, health care providers who, outside the judicial context, determine the capacity of patients to make a medical decision.

## **§ 812. Capacity to make decision**

Except where otherwise provided by law, including, but not limited to, Section 813 and the statutory and decisional law of testamentary capacity, a person lacks the capacity to make a decision unless the person has the ability to communicate verbally, or by any other means, the decision, and to understand and appreciate, to the extent relevant, all of the following:

- (a) The rights, duties, and responsibilities created by, or affected by the decision.
- (b) The probable consequences for the decisionmaker and, where appropriate, the persons affected by the decision.
- (c) The significant risks, benefits, and reasonable alternatives involved in the decision.

The Due Process in Competence Determinations Act, Prob. Code, §§ 810 to 813, 1801, 1881, 3201, and 3204, offers a wide range of potential mental deficits that may support a determination that a person is of unsound mind or lacks the capacity to make a decision or to do a certain act. *In re Marriage of Greenway*, 217 Cal. App. 4th 628, 640 (Cal. App. 4th Dist. 2013).

In California, a party is incompetent if he or she lacks the capacity to understand the nature or consequences of the proceeding, or is unable to assist counsel in the preparation of the case. *See* Cal. Prob. Code § 1801; *In re Jessica G.*, 93 Cal. App. 4th 1180, 1186 (2001); *Elder-Evins v. Casey*, 2012 U.S. Dist. LEXIS 92467 (N.D. Cal. July 3, 2012).

## DISCUSSION

Federal Rule of Bankruptcy Procedure 1016, cited by Debtor, provides that despite the death or incompetency of a debtor, a Chapter 13 case may proceed and be concluded if further administration is possible and in the best interest of the parties. That rule does not provide a process for the appointment of a representative—Debtor fails to state any legal basis for the relief sought.

More pressing is that rule only applies in cases of death or incompetency. Here, there is no allegation that Debtor lacks capacity to represent himself. From the evidence presented, it appears Sister determined Debtor's mental state was declining and convinced Debtor to give Sister power of attorney (though Debtor had capacity enough for the grant of power of attorney to be valid). Dckt. 54. Sister now seeks to represent Debtor in this bankruptcy case, in what appears to be a precautionary rather than necessary measure.

No evidence is presented as to Debtor's mental state, such as an expert medical opinion. Sister does not explain what qualifications she has to assess Debtor's mental state.

At the hearing, **XXXXXXXXXXXX**.

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 Substitute filed by Thomas Edward Warren (“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 Approve Nomination Of Debtor’s Representative is **XXXXXXXX**.

The Clerk of the Court shall forward a copy of this Order and the Civil Minutes for the February 12, 2019, to the attention of Jeffery Lodge, Esq., Office of the U.S. Trustee, as a referral to that office for review of this case and taking such action, including referral to such federal or state agencies whose duties include providing services or oversight for someone in Debtor’s situation.

45.    18-27147-E-13    **CHERYL/ANTHONY HEARNS**    **MOTION TO EMPLOY JCL REALTY,  
TAG-4                    Aubrey Jacobsen                    INC. AS REALTOR(S)  
1-18-19 [41]**

**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).**

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 18, 2019. By the court's calculation, 25 days' notice was provided. 14 days' notice is required.

The Motion to Employ 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, -----

<b>The Motion to Employ is <span style="color: red;">XXXXX</span>.</b>
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Cheryl Louise Hearn and Anthony Edward Hearn ("Debtor") seeks to employ Casey Constantine of JCL Realty, Inc. ("Realtor") pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Debtor seeks the employment of Realtor to sell real property of the debtor known as 630 G Street, Marysville, California (the "Property").

Debtor argues that the Realtor's appointment and retention is necessary to sell the Property and avoid foreclosure, and Debtor does not have the expertise necessary to market the Property. Dckt. 41 at ¶ 8. Realtor seeks a commission of 6 percent of the purchase price in return for services.

Casey Constantine, a realtor for JCL Realty, Inc. , testifies that she is a realtor licensed in

California. Constantine testifies “so far as [she has] been able to ascertain” that she and the company do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys, accountants, the U.S. Trustee or any person employed by the Trustee, except as follows: JCL Realty, Inc. is owned by Ted A. Greene, who is also the owner of The Law Offices of Ted A. Greene, Inc., Debtor’s bankruptcy law firm.. Dckt. 43 at ¶ 2.

Also filed in support of the Motion is Debtor’s Declaration. Among the testimony provided, Debtor states “To the best of our knowledge, [Realtor] has no connection with our creditors, or any other party-in-interest, or their respective attorneys, accounts, the U.S. Trustee or any employee of the U.S. Trustee, and represents no interest adverse to the estate, other than as follows: JCL Realty, Inc. is owned by Ted A. Greene, who is also the owner of The Law Offices of Ted A. Greene, Inc., [Debtor’s] bankruptcy law firm. Dckt. 44 at ¶ 9.

## **TRUSTEE’S RESPONSE**

The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Response on February 1, 2019. Dckt. 53. Trustee notes that the court has previously expressed concern with the same counsel and real estate agency that there may be a conflict of interest where both the law firm and real estate agency for Debtor have the same owner. *See* Bankr. E.D. Cal. No. 16-26043, Dckt. 161, June 27, 2017.

Trustee acknowledges however that it may be permitted under California law. Dckt. 53(citing THE STATE BAR OF CALIFORNIA STANDING COMMITTEE ON PROFESSIONAL RESPONSIBILITY AND CONDUCT FORMAL OPINION NO. 1982-69, <http://www.calbar.ca.gov/Portals/O/documents/ethics/Opinions/1982-1169.htm>).

## **DISCUSSION**

Pursuant to § 327(a), a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals, including attorneys, to represent or assist the trustee in carrying out the trustee’s duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must not hold or represent an interest adverse to the estate and be a disinterested person.

Section 328(a) authorizes, with court approval, a trustee or debtor in possession to engage the professional on reasonable terms and conditions, including a retainer, hourly fee, fixed or percentage fee, or contingent fee basis. Notwithstanding such approved terms and conditions, the court may allow compensation different from that under the agreement after the conclusion of the representation, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of fixing of such terms and conditions.

### **Possible Adverse Interests**

California Rule of Professional Conduct 1.8.1 provides that a lawyer shall not enter into a business transaction with a client unless:

(a) the transaction or acquisition and its terms are fair and reasonable to the client and the terms and the lawyer's role in the transaction or acquisition are fully disclosed and transmitted in writing to the client in a manner that should reasonably have been understood by the client;

(b) the client either is represented in the transaction or acquisition by an independent lawyer of the client's choice or the client is advised in writing to seek the advice of an independent lawyer of the client's choice and is given a reasonable opportunity to seek that advice; and

(c) the client thereafter provides informed written consent to the terms of the transaction or acquisition, and to the lawyer's role in it.

While the Trustee cites to a Formal Opinion issued by the Standing Committee on the Professional Responsibility, Debtor and Debtor's counsel have not made any argument or provided legal support for this transaction. It is unclear whether Debtor has been advised in a writing to seek independent advice of an independent lawyer.

The court has further concerns. Both Realtor and Debtor's Declarations do not convey confidence in there being no adverse interests. Debtor's Declaration is prefaced with "To the best of our knowledge" and Realtor's with "so far as I have been able to ascertain." Dckt. 43 at ¶ 2. ; Dckt. 44 at ¶ 9. These statements could be read as an out; where the declarations provided are otherwise sworn to be "true and correct" under penalty of perjury, the testimony provided as to adverse interests is only made as far as the testifying parties know, and if that testimony turns out not to be true and correct Debtor and Realtor cannot be held responsible. Such testimony does not meet the requirements of 28 U.S.C. § 1746.

Additionally, the court has not been provided with a copy of the proposed agreement between Debtor and Realtor. Possibly, counsel did not want the court to scrutinize the terms of the agreement.

At the hearing, **XXXXXX**.

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 Employ filed by Cheryl Louise Hearn and Anthony Edward Hearn ("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 Employ is **XXXXXXX**.



46. [18-26373-E-13](#) **HERBERT MILLER**  
[JHH-1](#) **Judson Henry**

**MOTION TO RECONSIDER DISMISSAL  
OF CASE  
1-15-19 [30]**

**DEBTOR DISMISSED: 11/07/2018**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 15, 2019. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Vacate 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). The defaults of the non-responding parties and other parties in interest are entered.

**The Motion to Vacate is denied.**

Herbert Edward Miller ("Debtor") filed the instant case on October 9, 2018. Dckt. 1. On November 7, 2018, the Chapter 13 case was dismissed for failure to timely file documents. Order, Dckt. 23.

On January 15, 2019, Debtor filed this instant Motion to Vacate. Dckt. 30. The Motion states with particularity:

1. Debtor inadvertently missed filing his Form 122C-1 - Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period, and his case was dismissed on or about November

7, 2018. *Id.* at 2:13-15.

2. Because Debtor still requires adjustment of his debts, he now brings this application to reopen his case in order to proceed with his chapter 13 plan. *Id.* at 2:16-17.
3. Debtor also attaches a copy of his missing Form 122C-1 - Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period, which he will file immediately upon the reopening of this case. *Id.* at 2:17-19.
4. Relief is proper because a new fact not in existence at the time Debtor's case was dismissed, as this case has not yet been closed, and Debtor is prepared to proceed forward with his case. *Id.* at ¶ A. Rather, Debtor is highlighting the newly discovered fact that the Court has never closed this case and highlighting the new fact that he has now filed his missing Form 122C-1. *Id.* at 4:2-3.
5. If relief is not granted, Debtor will be prejudiced by 11 U.S.C. § 362(c)(3). *Id.* at ¶ B. Debtor, then *pro se*, prepared a Form 122C-1 but due to inadvertence did not get it filed. No other form or schedule was or is missing. *Id.* at 4:21-24.
6. Equity supports the court granting the motion because (1) the previous deficiency that led to dismissal is now entirely cured, (2) this case has remained open since the dismissal and remains open now, (3) Debtor is ready to immediately proceed with his case, and (4) requiring Debtor to file a new case would be in the case's present status entirely unnecessary yet at the same time materially prejudicial to Debtor. *Id.* at 5:2-7.

## **TRUSTEE'S RESPONSE**

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on January 23, 2019. Dckt. 35. Trustee provides an overview of the case history. Among events in the case, the court issued an Order on Extension of Deadline to File Missing Documents giving Debtor until November 6, 2018 to file documents and give notice to all creditors. Dckt. 16. Trustee asserts Debtor has to date failed to file proof of service.

Trustee notes further that Debtor lists on Schedule D secured debts of \$9,919,447.28. Schedule D, Dckt. 14. Trustee argues that even if the court finds cause to reconsider its Order, the Debtor is not eligible for Chapter 13 relief. 11 U.S.C. § 109(e), stating the current secured debt limit for Chapter 13 is \$1,184,200.

## **CREDITOR'S OPPOSITION**

Allan Frumkin ("Creditor") filed an Opposition on January 29, 2019. Dckt. 39. Creditor argues the court should deny the Motion because there are no new facts or errors of law, since forgetting to file documents is not a new fact or error of law. *Id.* at 2:22-24.5. Creditor asserts further Debtor's argument that (1) the case not being closed and (2) that the Form 122C-1 has now been filed are new facts is unrelated to the Order dismissing the case, and that no facts have changed. *Id.* at 2:25.5-3:3.

## **DEBTOR'S REPLY TO CREDITOR'S OPPOSITION**

Debtor filed a Reply to Creditor's Opposition on February 5, 2019. Dckt. 40. Debtor reiterates the newly discovered fact is that the case has yet to be closed, that many facts are now known and in existence that were not at the time Debtor's case was dismissed, that equity supports granting the Motion.

Debtor also now argues, apparently acknowledging that Debtor is ineligible for Chapter 13 relief, that the more equitable efficient treatment of this case would be conversion to Chapter 11.

## **DEBTOR'S REPLY TO TRUSTEE'S RESPONSE**

Debtor filed a Reply to Trustee's Response on February 5, 2019. Dckt. 42. Debtor argues, apparently acknowledging that Debtor is ineligible for Chapter 13 relief, that the more equitable efficient treatment of this case would be conversion to Chapter 11. Debtor reiterates the newly discovered fact is that the case has yet to be closed, that many facts are now known and in existence that were not at the time Debtor's case was dismissed, that equity supports granting the Motion.

## **APPLICABLE LAW**

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

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

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

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

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

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

## DISCUSSION

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

The court in this case had granted an extension of time for filing documents. Dckt. 16. Debtor failed to meet the extended deadline, and the case was automatically dismissed for failure to timely file documents. Order, Dckt. 23.

Debtor has not provided an explanation as to why documents were not timely filed, other than that it was “pure oversight and inadvertence.” Dckt. 30 at 4:21-24. Based on the evidence presented, the court finds there was no mistake, inadvertence, surprise, or excusable neglect. Debtor was proceeding in *Pro Se*. Debtor knew he did not have the specialized knowledge of a licensed bankruptcy attorney, and assumed the risk of proceeding without counsel. Debtor received clear notice of the

documents necessary for filing, and the court issued an extension on the time for filing. Debtor did not file all necessary documents, and did not file proof of service on all creditors as required by this court's Order. Dckt. 16.

Debtor argues there are new facts and evidence that could not have been reasonably discovered, including (1) this bankruptcy case has not been closed, (2) Debtor is prepared to proceed forward with his case, and (3) Debtor has now filed his missing Form 122C-1. Dckt. 30 at 4:2-3.

Based on the evidence presented, the court finds no new facts or evidence exists. The bankruptcy case remains open—keeping the status quo is *per se* not a new fact. Similarly, Debtor's continued desire to proceed under Chapter 13 is not new. While Debtor filing Form 122C-1 is "new," it is not relevant to the determination of whether Debtor filed documents by the extended deadline.

Debtor also argues that equity supports vacating dismissal of this case because (1) the previous deficiency that led to dismissal is now entirely cured, (2) this case has remained open since the dismissal and remains open now, (3) Debtor is ready to immediately proceed with his case, and (4) requiring Debtor to file a new case would be in the case's present status entirely unnecessary yet at the same time materially prejudicial to Debtor because Debtor would be subject to 11 U.S.C. § 362(c)(3). *Id.* at 5:2-7.

In essence, Debtor argues it would be "the height of inequity" to require Debtor be subject to the provisions of the Bankruptcy Code enacted by congress to prevent abuse of filings. Dckt. 40 at 3:16. The court cannot agree.

Debtor was asked to file the basic documents necessary for filing a Chapter 13 case and was given an extension to do so. Debtor failed to act in accordance with the requirements of the Bankruptcy Code. Furthermore, as discussed by the Trustee, Debtor is not here eligible for Chapter 13 relief.

There does not appear to be any prejudice to Debtor here. Debtor can file another case, and seek to extend the automatic stay in accordance with the provisions of the Bankruptcy Code.

The Motion is denied.

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

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

The Motion to Vacate filed by Herbert Edward Miller ("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 denied.

47. [13-29907-E-13](#)      SYAMPHAI      MOTION TO DISBURSE NON-EXEMPT  
[DPC-4](#)                      LIEMTHONGSAMOUT      FUNDS  
   Scott Shumaker                      1-7-19 [[200](#)]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 7, 2019. By the court’s calculation, 36 days’ notice was provided. 28 days’ notice is required.

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

The Chapter 13 Trustee, David Cusick (“Trustee”), filed this Motion To Disburse Non-Exempt Funds on January 7, 2019. Dckt. 200.

On December 31, 2013, the debtor Syamphai Liemthongsamout’s (“Debtor”) received a

cashier's check from Golden 1 Credit Union in the amount of \$15,852.00, which had not been previously disclosed to the court. Debtor explained she did not disclose the funds because she intended the funds to be for her child, and did not consider them hers. Dckt. 40. Of those funds, Debtor claimed \$2,897.00 as exempt. Dckt. 44. In the Order Confirming Plan, the court ordered the remaining \$12,945.00 of non-exempt funds (the "Property") to be held by the Trustee pending further order of the court. Dckt. 61.

Trustee seeks an Order authorizing disbursement of the Property back to Debtor, as the plan did not require those non-exempt funds.

Trustee asserts Debtor has completed the confirmed plan, having paid \$79,550.05 into the Plan, including \$13,835.21 to unsecured claims. Trustee also notes Debtor sought to sell property alleged to belong to Debtor's mother who passed away in 2018, and the court denied Debtor's Motion. Dckt. 198.

Trustee argues disbursement of the Property is necessary for a Final Report and Account to be completed in this case. Trustee asserts further that until such Report is filed, the Clerk's Notice for the time to object to discharge is not triggered, with the Trustee intending to oppose discharge unless a compromise is reached with the Debtor as to \$50,000.00 in life insurance proceeds Debtor received and did not disclose.

Trustee asserts a tentative compromise has been reached which would result in a 50 percent dividend to unsecured claims. However, no motion for approval of compromise has been filed because it will rely on Debtor's sale of property.

Trustee states he does not intend to seek conversion of the case to one under Chapter 7 as it is uncertain subject property can be reached by a Chapter 7 Trustee under 11 U.S.C. § 348(f)(2).

## **DEBTOR'S RESPONSE**

Debtor filed a Reply on January 29, 2019. Dckt. 204. Debtor states the following:

1. Debtor does not object to the Motion or to Trustee disbursing the non-exempt funds in the amount of \$12,945 plus accrued interest to unsecured creditors.
2. Debtor intends to negotiate with the Trustee regarding insurance proceeds Debtor received after her mother's passing, which Debtor failed to disclose.
3. Debtor has disbursed a considerable portion of the life insurance proceeds to pay for her mother's final expenses.
4. Debtor's mother, siblings and Debtor had agreed that proceeds from the sale of the property located at 3669 Reel Circle in Sacramento would

pass to Debtor's siblings and not Debtor, since Debtor had incurred debt against the rental property, and had already received any benefit due her.

## **MOTION TO SELL**

Debtor sought to sell her residence by *Ex Parte* Motion To Sell filed August 28, 2018. Dckt. 174, 175. In denying the Motion to sell, the court addressed several concerns, summarized as follows (for a full discussion, *See* Civil Minutes, Dckt. 197):

1. Debtor failed to disclose whether the proposed buyer had a relationship with Debtor or her husband.
2. Debtor failed to provide the court a proposed agreement for the sale of the property.
3. For what Debtor describes as property not in a desirable area and stated to have a value of \$90,000.00 on original and Amended Schedule I, the sales price is \$210,000.00. Debtor has not addressed the significant discrepancy in value stated for the Property as compared to what is now sought.
4. When asked by the court, Debtor's counsel could not advise the court and parties in interest that Debtor attempted to market this property. Rather, counsel repeated that the purported buyer of the property (for which no contract was provided as an exhibit) was demanding that the Debtor immediately sell the property or that he would walk.
5. Debtor asserts she will receive nothing from the sale because her mother desired for the residence to be split evenly among the children, and because Debtor's interest is offset by a \$46,603.86 loan. However, if Debtor was truly a joint tenant with her mother (as stated by Debtor), the mother's interest (there apparently being no will and no severance of the joint tenancy) would have passed to Debtor by operation of law after Debtor's mother died. Debtor has not explained how her transfer to her siblings of proceeds of the sale is anything other than a gift.
6. Debtor's mother had died two years prior to the Motion To Sell being filed. However, Debtor did not disclose before that Motion that she had obtained complete ownership in the residence.
7. Debtor explained that after her mother's passing, her sister no longer sought to pay rent to live in the residence (Debtor asserting she had to sell the residence because the loss of rent income inhibited her ability to make the mortgage payments). However, no rent income was ever listed on the Debtor's Schedules and put into the plan.



9. It appears to be a strange "coincidence" that notwithstanding the Debtor purporting to have lost the rent revenue from the property in March 2018 and not being able to make the mortgage payments since March 2018, it was not until after the final plan payment was made in July 2018 that Debtor rushed in with the August 2018 for an ex parte approval (the three day notice period was so short that it was effectively ex parte) approval of the sale.
10. Debtor previously stated under penalty of perjury that she was not married, but later identifies having a "common law marriage" and that she and her "husband" own the residence. Debtor lists her "husband" as a dependent and based on the Schedules is clearly paying the expenses for the entire family, while choosing what income of her "husband" is put towards the plan.
11. The attempted sale; inaccurate statements on the Schedules, made under penalty of perjury; and Debtor's husband and father of their child only making "contributions" as necessary to fund a minimal unsecured claim dividend plan, while appearing to pocket the rest of his earnings and have the Debtor's creditors subsidize his lifestyle and his child's expenses, all raise serious questions concerning the good faith of the Debtor and her husband in this bankruptcy case.

Civil Minutes, Dckt. 197.

## **DISCUSSION**

The Trustee does not clearly state grounds in support for the relief sought. Trustee seems to request disbursement of the Property to allow Trustee to oppose Debtor's discharge unless a compromise is reached as to Debtor's undisclosed \$50,000.00 in life insurance proceed.

Trustee states that a tentative compromise has been reached. However, this statement is hard to believe given Debtor's Reply. Debtor apparently believes the current Motion to be one requesting the Property be used to pay unsecured claims, and not one for the return of the funds to Debtor as the Trustee actually requests. Dckt. 204. While Trustee believes a settlement would require Debtor to sell her residence, Debtor continues to assert that proceeds of a sale of the residence must go to her siblings and not the Estate.

The settlement talks also revolve around Debtor's life insurance proceeds, received after her mother passed over two years ago. It is not stated when Debtor received these funds. However, debtor states in its Reply that Debtor apparently elected to use "a considerable portion" of the \$50,000.00 (property of the Estate) to pay off her mother's final expenses.

Finally, the court is uncertain as to why the Trustee seeks to have the monies returned to the

Debtor rather than disbursed through the Plan. The monies are not exempt and available assets for payment of creditor claims (whether in a Chapter 13 case or Chapter 7 liquidation). Under the Chapter 7 Plan the Debtor could muster only a 7% dividend to creditors holding general unsecured claims. This was based on assets that did not include the undisclosed non-exempt \$15,852.00.

The Debtor, recognizing that the therefore undisclosed non-exempt monies should properly be disbursed to creditors, makes her statement of non-opposition to the payment of the monies to creditors. Reply, p. 1:18.5-19.5.

Therefore, the Motion is granted and the Trustee is ordered to disburse the \$12,945.00 he is holding pursuant to the Court's Order confirming the Chapter 13 Plan (Dckt. 61) to creditors holding general unsecured claims through the Chapter 13 Plan.

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 Disburse Non-Exempt Funds filed 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 Motion To Disburse Non-Exempt Funds is granted and the Chapter 13 Trustee shall disburse the \$12,945.00 of non-exempt monies the Trustee is holding pursuant to the Confirmation Order in this Case (Dckt. 61) through the Chapter 13 Plan in this case to creditors holding Class 7 general unsecured claims.

This is without prejudice to the rights of the Trustee or any other party in interest to have other non-exempt assets of the Debtor disbursed through the plan, seek dismissal of the case for failure to disclose assets or provide for the payment of the value of non-exempt assets through the Plan or other rights.

48. [18-26708-E-13](#)      SAYTHAMMA SAYAMNATH      CONTINUED OBJECTION TO  
[DPC-1](#)                      Peter Macaluso                      CONFIRMATION OF PLAN BY DAVID  
P. CUSICK  
12-18-18 [20]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on December 18, 2018. By the court's calculation, 28 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 -----

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

The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that Debtor proposes a 100 percent plan paying \$500 per month over 60 months where Debtor has the ability to pay creditors immediately. Debtor's Schedules disclose a \$33,000.00 property described as "Wells Fargo Portfolio- emergency fund", (Dckt. 10, Page 5, §18). Based on Debtor's testimony at the meeting of creditors, the Trustee believes the funds were life insurance proceeds from a son intended for the benefit of the Debtor's other sons who are minors.

Trustee's objection is essentially that Debtor's plan fails the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4) because creditors would notwithstanding the Chapter 13 Case be entitled to interest. The Trustee also argues that, where here the Debtor is seeking for the non-exempt funds to vest on confirmation and allow Debtor to dissipate funds, that the plan may not have been proposed in good faith as required by 11 U.S.C. § 1325(a)(3).

## JANUARY 15, 2019 HEARING

At the January 15, 2019 hearing the court continued the hearing on the Motion to February 12, 2019. Dckt. 48.

## DEBTOR'S SUPPLEMENTAL REPLY

Debtor filed a Supplemental Reply on January 25, 2019. Dckt. 52. Debtor argues her Motion To Vacate Spousal Waiver set for hearing January 29, 2019 would resolve the Trustee's grounds for Objection.

## TRUSTEE'S SUPPLEMENTAL RESPONSE

Trustee filed a Supplemental Response on February 1, 2019. Dckt. 59. Trustee notes only that a Request For Voluntary Dismissal of the case has been filed by Debtor. *See* Dckt. 54.

The Trustee having identified a significant non-exempt asset, Debtor having the opportunity to structure a plan to provide for creditor claims and protect the non-exempt asset from premature dissipation, it now appears that Debtor is seeking to slip from bankruptcy rather than fulfil her obligations and obtain the benefits available to her. Rather than dismissal, it may now well be that conversion to Chapter 7 is appropriate to avoid a situation where the non-exempt assets are diverted to persons other than Debtor's creditors.

## APPLICABLE LAW

The Bankruptcy Code provides the following:

(a) Except as provided in subsection (b), the court shall confirm a plan if--

...

(4) the value, **as of the effective date of the plan**, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of this title on such date;

...

11 U.S.C. § 1325(a)(4)(emphasis added). Colliers provides a review of the valuation standard, which may require consideration of what interest a creditor would be entitled:

### **[b] Valuation Standard: Present Value of Deferred Payments Must Equal Liquidation Value**

Section 1325(a)(4) dictates that the chapter 13 plan offer the holder of each

allowed unsecured claim property, including deferred payments, of a present value not less than the liquidation value of such claim. In other words, the court must capitalize the proposed payments, by converting deferred payments offered the creditor into an equivalent capital sum as of the effective date of the plan. Section 1325(a)(4) cannot be properly applied simply by comparing the sum total of the proposed deferred payments with the likely recovery on the unsecured claim in the event of liquidation. Unless the plan proposes that all payments to unsecured creditors will be made immediately upon the effective date of the plan, the present value language in the section dictates that interest be paid to compensate for the lost time value of the money caused by the deferral of payments. Thus, if a creditor holding an allowed unsecured claim would receive full payment of its claim in a chapter 7 liquidation, a plan would not meet the best interests test unless deferred payments to the creditor paid one hundred percent of the claim plus interest. If the creditor would have received postpetition interest in a chapter 7 case because the debtor is fully solvent, then such interest, running until the effective date of the plan, must also be paid.

The principles followed in calculating present value interest under section 1325(a)(4) should be similar to those followed under section 1325(a)(5), because both sections share the goal of compensating creditors for a delay in payments they would otherwise receive immediately.

8 COLLIER ON BANKRUPTCY P 1325.05 [2][b] (16th 2018)

## **DISCUSSION**

Trustee's objection is well-taken.

Debtor proposes to pay 100 percent to unsecured claims, but does not incorporate interest into that calculation. Here, Debtor's nonexempt assets could satisfy the unsecured claims immediately were the case filed under Chapter 7. The proposed plan does not propose to compensate unsecured claims for their lost time value. Therefore, the plan fails the liquidation analysis and cannot be confirmed. 11 U.S.C. § 1325(a)(4); *See also* 8 COLLIER ON BANKRUPTCY P 1325.05 [2][b] (16th 2018).

Trustee also argues that the plan is filed in bad faith because Debtor has not explained why payments are not completed sooner where they could liquidate the Wells Fargo Portfolio to immediately satisfy claims. Presumably, this argument is tied to the failure to meet the liquidation test, as a debtor normally may make payments primarily from income rather than assets in a Chapter 13 case. 8 COLLIER ON BANKRUPTCY P 1300.01 (16th 2018).

While Debtor argues her Motion To Vacate Spousal Waiver set for hearing January 29, 2019 would resolve the Trustee's grounds for Objection (that Motion having been granted (Order, Dckt. 57)), Debtor does not explain this point. Furthermore, Debtor filed a Request For Voluntary Dismissal of the case on January 29, 2019. Dckt. 54.

Having failed the liquidation test, 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.

## **FINAL RULINGS**

49.	<a href="#"><u>18-23401</u></a> -E-13 <a href="#"><u>MWB-4</u></a>	PAUL/SHERI D'ANGELO Mark Briden	MOTION TO CONFIRM PLAN 1-10-19 <a href="#"><u>[70]</u></a>
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**Final Ruling:** No appearance at the February 12, 2019, hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

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 10, 2019. By the court’s calculation, 33 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 hearing on the Motion to Confirm the Amended Plan is continued to March 12, 2019 at 3:00p.m.**

Paul Ricco D'Angelo and Sheri Lynn D'Angelo ("Debtor") filed this Motion to Confirm Third Amended Plan on January 10, 2019. Dckt. 70. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

No Third Amended Plan was filed with the Original Motion. An Amended Motion was filed along with the Third Amended Plan on January 22, 2019. Dckts. 87, 89. By the court's calculation, that date was only 21 days prior to the hearing.

On January 23, 2019, Debtor filed a Notice Of Continued Motion indicating the present Motion shall be heard March 12, 2019. Dckt. 100. However, no authority was asserted for how Debtor could *sua sponte* continue the hearing simply by refile notice. Such a practice would wreak havoc on the court's docket.

Here, Debtor's Motion had clear defects in service. The court finds the continuance sought was to cure those defects, and not for some abusive practice. Therefore, the court treats the Notice Of Continued Motion as an *ex parte* application for a continuance, grants the application, and continues the hearing on the Motion to March 12, 2019 at 3:00p.m.

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 Paul Ricco D'Angelo and Sheri Lynn D'Angelo ("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 hearing on the Motion to Confirm the Amended Plan is continued to March 12, 2019 at 3:00p.m.

50. [18-27413](#)-E-13 **MARWAN ABDULRAHIM** **OBJECTION TO DISCHARGE BY**  
[DPC-1](#) **Peter Macaluso** **DAVID P. CUSICK1**  
1-7-19 [[19](#)]

**Final Ruling:** No appearance at the February 12, 2019, 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, and Office of the United States Trustee on January 7, 2019. By the court’s calculation, 36 days’ notice was provided. 28 days’ notice is required.

The Objection to Discharge has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4004(a). 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 Discharge is sustained.**

The Chapter 13 Trustee, David Cusick (“Objector”), objects to Marwan Othman Abdulrahim’s (“Debtor”) discharge in this case. Objector argues that Debtor is not entitled to a discharge in the instant bankruptcy case because Debtor previously received a discharge in a Chapter 7 case.

Debtor filed a Chapter 7 bankruptcy case on February 8, 2018. Case No. 18-20693. Debtor received a discharge on May 14, 2018. Case No. 18-20693, Dckt. 39.



The instant case was filed under Chapter 13 on November 28, 2018.

11 U.S.C. § 1328(f) provides that a court shall not grant a discharge if a debtor has received a discharge “in a case filed under chapter 7, 11, or 12 of this title during the 4-year period preceding the date of the order for relief under this chapter.” 11 U.S.C. § 1328(f)(1).

Here, Debtor received a discharge under 11 U.S.C. § 727 on May 14, 2018, which is less than four years preceding the date of the filing of the instant case. Case No. 18-20693, Dckt. 39. Therefore, pursuant to 11 U.S.C. § 1328(f)(1), Debtor is not eligible for a discharge in the instant case.

Therefore, the Objection is sustained. Upon successful completion of the instant case (Case No. 18-27413), the case shall be closed without the entry of a discharge, and Debtor shall receive no discharge in the instant case.

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 Discharge filed by the Chapter 13 Trustee, David Cusick (“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 Objection to Discharge is sustained, and upon successful completion of the instant case, Case No. 18-27413, the case shall be closed without the entry of a discharge.

51. [18-25851-E-13](#)  
[DPC-4](#)

**ROBERT HUNTER**  
Peter Macaluso

**OBJECTION TO DEBTOR'S CLAIM OF  
EXEMPTIONS**  
1-3-19 [56]

**Final Ruling:** No appearance at the February 12, 2019, hearing is required.  
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**The Objection to Debtor's Claim Of Exemption is dismissed without prejudice.**

The Chapter 13 Trustee, David Cusick (“the Chapter 13 Trustee”), having filed an Ex Parte Motion to Dismiss the pending Objection on February 1, 2019, Dckt. 69; no prejudice to the responding party appearing by the dismissal of the Objection; the Chapter 13 Trustee having the right to request dismissal of the objection pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Robert Paul Hunter (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Objection is dismissed without prejudice, and the court removes this Objection from the calendar.

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 Debtor's Claim Of Exemption filed by the Chapter 13 Trustee, David Cusick (“the Chapter 13 Trustee”), having been presented to the court, the Chapter 13 Trustee having requested that the Objection itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 69, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection to Debtor's Claim Of Exemption is dismissed without prejudice.

52. [18-26358](#)-E-13      TANESHIA WRAY      MOTION TO VALUE COLLATERAL OF  
[PGM-2](#)                      Peter Macaluso      HOUSEHOLD FINANCE  
CORPORATION  
1-13-19 [64]

**Final Ruling:** No appearance at the February 12, 2019, hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditor, and Office of the United States Trustee on January 13, 2019. By the court’s calculation, 30 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 Household Finance Corporation (“Creditor”) is granted, and Creditor’s secured claim is determined to have a value of \$0.00.**

The Motion to Value filed by Taneshia Lannette Wray (“Debtor”) to value the secured claim of Household Finance Corporation (“Creditor”) is accompanied by Debtor’s declaration. Debtor is the owner of the subject real property commonly known as 341 Groth Circle, Sacramento, California (“Property”). Debtor seeks to value the Property at a fair market value of \$360,000.00 as of the petition filing date. Decl., Dckt. 66 at ¶ 3. 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).

The valuation of property that secures a claim is the first step, not the end result of this

Motion brought pursuant to 11 U.S.C. § 506(a). The ultimate relief is the valuation of a specific creditor's secured claim.

11 U.S.C. § 506(a) instructs the court and parties in the methodology for determining the value of a secured claim.

(a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property**, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a) (emphasis added). For the court to determine that creditor's secured claim (rights and interest in collateral), that creditor must be a party who has been served and is before the court. U.S. Constitution Article III, Sec. 2 (case or controversy requirement for the parties seeking relief from a federal court).

## **NO PROOF OF CLAIM FILED**

The court has reviewed the Claims Registry for this bankruptcy case. No Proof of Claim has been filed by a creditor that appears to be for the claim to be valued.

## **DISCUSSION**

The senior in priority first deed of trust secures a claim with a balance of approximately \$457,395.05. Proof of Claim, No. 5. Creditor's second deed of trust secures a claim with a balance of approximately \$71,080.00. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of \$0.00, the value of the collateral, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). 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 Taneshia Lannette Wray ("Debtor") having been presented to the court, and upon review of



Caleb Christian Humphrey and Emily Suzanne Humphrey (“Debtor”) seek confirmation of the Modified Plan, adjusting payments to account for unexpected expenses, including a complete breakdown of one of Debtor’s vehicles. Dckt. 26. The Modified Plan provides for payments of \$1,350 for 2 months, \$0 for 3 months, and 1,450 for the remaining 55 months of the plan term. Dckt. 30. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

### **CHAPTER 13 TRUSTEE’S OPPOSITION**

David Cusick (“the Chapter 13 Trustee”) filed an Opposition on December 3, 2018. Dckt. 33. Trustee opposes the Motion on the basis that the plan would take 96 months to complete because the additional provisions of the plan provide for \$13,600 (Dckt. 30 at p. 7) for pre-petition arrears to Ocwen Loan Servicing, LLC (“Creditor”) where the scheduled claim actually only asserts arrears of \$10,380.00. Dckt. 30 at p. 3.

### **DECEMBER 18, 2018 HEARING**

At the December 18, 2018 hearing the court continued the hearing on the Motion to February 12, 2019 at 3:00p.m. Dckt. 36.

### **SUPPLEMENTAL PLEADINGS**

No party to this Contested Matter filed further pleadings.

However, a review of the docket shows Debtor filed an Objection to claim of Creditor on January 22, 2019. Dckt. 37. That Objection has the same Docket Control Number “LBG-1” associated with the present Motion <sup>FN.1</sup>. Debtor disputes Proof of Claim, No. 6 on the basis it overstates arrears to be \$20,430.00 where only \$13,330.80 is necessary to cure.

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FN.1. Movant is reminded that the Local Bankruptcy Rules require the use of a new Docket Control Number with each motion. LOCAL BANKR. R. 9014-1(c). Here, Debtor used the same DCN for both the present Motion and the Objection To Claim. That is not correct. Counsel is reminded that not complying with the Local Bankruptcy Rules is cause, in and of itself, to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(c)(l).

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### **DISCUSSION**

Creditor filed Proof of Claim, No. 6 on July 16, 2018, asserting greater arrears than what are provided for in the plan. As the feasibility of the plan relies on Debtor’s upcoming Objection to Claim which asserts arrears owing are only \$13,330.80. *See* Objection, Dckt. 37. Therefore, the court shall continue the hearing on this Motion to be heard alongside Debtor’s Objection, March 12, 2019 at 3:00p.m.

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 Caleb Christian Humphrey and Emily Suzanne Humphrey (“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 hearing on the Motion is continued to March 12, 2019 at 3:00p.m.

54. [18-23464](#)-E-13      **CYNTHIA PAYSINGER**      **MOTION TO MODIFY PLAN**  
[PGM-4](#)                      **Peter Macaluso**                      **12-29-18 [92]**

**Final Ruling:** No appearance at the February 12, 2019, hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 29, 2018. By the court’s calculation, 45 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Cynthia J. Paysinger (“Debtor”) has filed evidence in support of confirmation. David Cusick (“the Chapter 13 Trustee”) filed a Response indicating non-opposition on January 25, 2019. Dckt. 104. 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 Cynthia J. Paysinger (“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 29, 2019, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick (“the Chapter 13 Trustee”) for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.



55. [17-20471-E-13](#)  
[PGM-2](#)

DEANNA TORREZ  
Peter Macaluso

MOTION TO MODIFY PLAN  
12-29-18 [61]

**Final Ruling:** No appearance at the February 12, 2019, hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 29, 2018. By the court's calculation, 45 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Deanna Maria Torrez ("Debtor") has filed evidence in support of confirmation. David Cusick ("the Chapter 13 Trustee") filed a Response indicating non-opposition. January 25, 2019. Dckt. 73. 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 Deanna Maria Torrez ("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 29, 2018, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick (“the Chapter 13 Trustee”) for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

56. [18-24872-E-13](#) **KEITH/LAKEISHA STEWART** **MOTION TO VALUE COLLATERAL OF**  
[RK-2](#) **Richard Kwun** **CAPITAL ONE AUTO FINANCE**  
**1-2-19 [88]**

**Final Ruling:** No appearance at the February 12, 2019, hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on January 2, 2019. By the court’s calculation, 41 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 Capitol One Auto Finance, C/O AIS Portfolio Services, LP (“Creditor”) is granted, and Creditor’s secured claim is determined to have a value of \$2,600.00.**

The Motion filed by Keith Anthony Stewart and LaKeisha Michelle Stewart (“Debtor”) to value the secured claim of Capitol One Auto Finance, C/O AIS Portfolio Services, LP (“Creditor”) is accompanied by Debtor’s declaration. Debtor is the owner of a 2005 Mercedes Benz E Class Sedan 4D

E500 (“Vehicle”). Debtor seeks to value the Vehicle at a replacement value of \$2,600.00 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).

The lien on the Vehicle’s title secures a purchase-money loan incurred on November 14, 2010, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$28,060.53. Proof of Claim, No. 6. Therefore, Creditor’s claim secured by a lien on the asset’s title is under-collateralized. Creditor’s secured claim is determined to be in the amount of \$2,600.00, 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 Keith Anthony Stewart and LaKeisha Michelle Stewart (“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 Capitol One Auto Finance, C/O AIS Portfolio Services, LP (“Creditor”) secured by an asset described as 2005 Mercedes Benz E Class Sedan 4D E500 (“Vehicle”) is determined to be a secured claim in the amount of \$2,600.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$2,600.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

57. [18-24872-E-13](#)      **KEITH/LAKEISHA STEWART**      **MOTION TO MODIFY PLAN**  
[RK-1](#)                      **Richard Kwun**                      **1-2-19 [81]**

**Final Ruling: No appearance at the February 12, 2019 Hearing is required.**

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 2, 2019. By the court’s calculation, 41 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion. The defaults of the non-responding parties in interest are entered.

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

La Keisha Stewart and Keith Stewart (“Debtors”) seeks confirmation of the Modified Plan to address increased income and changed expenses, and to cure defaults that resulted from unexpected expenses and shortages of income. Dckt. 85 at ¶¶ 5-6. The Modified Plan provides that Debtor has paid \$1,685, and payments shall be \$2,092 for the remainder of the plan. Dckt. 83. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

**CHAPTER 13 TRUSTEE’S OPPOSITION**

David Cusick (“the Chapter 13 Trustee”) filed an Opposition on January 25, 2019. Dckt. 103. Trustee opposes confirmation on the basis that the plan relies on a Motion To Value. *See* Motion, Dckt.

88.

**DISCUSSION**

The court granted Debtor’s Motion to Value the Secured Claim of Capitol One Auto Finance, C/O AIS Portfolio Services, LP. Motion to Value, DCN: RK-2, February 12, 2019 hearing, final ruling.

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 La Keisha Stewart and Keith Stewart (“Debtors”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, and Debtor’s Modified Chapter 13 Plan filed on January 2, 2019, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick (“the Chapter 13 Trustee”) for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

58. [18-27289-E-13](#)  
[DPC-1](#)

SALVADOR CARABEO  
Thomas Gillis

**OBJECTION TO DEBTOR'S CLAIM OF  
EXEMPTIONS**  
1-9-19 [18]

**Final Ruling:** No appearance at the February 12, 2019, hearing is required.  
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**The Objection to Claimed Exemptions is dismissed without prejudice.**

David Cusick (“the Chapter 13 Trustee”) an Ex Parte Motion to Dismiss the pending Objection on February 4, 2019, Dckt. 35; no prejudice to the responding party appearing by the dismissal of the Objection; the Chapter 13 Trustee having the right to request dismissal of the objection pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Salvador Pina Carabeo (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Objection is dismissed without prejudice, and the court removes this Objection from the calendar.

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 Claimed Exemptions filed by David Cusick (“the Chapter 13 Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Objection itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 35, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection to Claimed Exemptions is dismissed without prejudice.

59. [16-27697-E-13](#)  
[PGM-5](#)

**BRIAN OKAMOTO**  
Peter Macaluso

**MOTION TO MODIFY PLAN**  
12-29-18 [110]

**Final Ruling:** No appearance at the February 12, 2019, hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 29, 2018. By the court’s calculation, 45 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Brian Mitchell Okamoto (“Debtor”) has filed evidence in support of confirmation. David Cusick (“the Chapter 13 Trustee”) filed a Response indicating non-opposition on January 25, 2019. Dckt. 118. 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 Brian Mitchell Okamoto (“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 29, 2018, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick (“the Chapter 13 Trustee”) for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

60.	<a href="#">18-22497-E-13</a> <a href="#">RSM-6</a>	<b>ROBERT MAC BRIDE</b> Pro Se	<b>CONTINUED MOTION TO CONFIRM PLAN</b> 12-17-18 [ <a href="#">103</a> ]
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**The court issued an Order confirming the plan and removing the matter from the calendar.**

The Debtor's Motion to Confirm came before the Court for hearing on January 15, 2019. The Court ordered the matter continued to February 12, 2019 at 3:00 P.M., unless the Trustee found that the final plan (Dckt. 128) was an accurate transcription of the terms of the pending plan to the current plan form. Dckt. 107.

On February 1, 2019, the court issued an Order granting the Motion and confirming Debtor’s Fourth Amended Plan filed January 15, 2019. Dckt. 136. The court further Ordered that the hearing set for February 12, 2019 at 3:00p.m.is removed from calendar.



61. [17-25945-E-13](#)      **HARRY/JOSEPHINE NASH**      **MOTION TO MODIFY PLAN**  
[PGM-4](#)                      **Peter Macaluso**                      **12-29-18 [84]**

**Final Ruling:** No appearance at the February 12, 2019, hearing is required.  
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Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 29, 2018. By the court’s calculation, 46 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 the hearing on the Motion to Confirm the Modified Plan is continued to  
March 12, 2019 at 3:00p.m.**

Harry R. Nash and Josephine Ann Nash (“Debtor”) seek confirmation of the Modified Plan because of changes in circumstances, including having to evict a delinquent tenant, performing repairs at the cost of \$11,000.00, and incurring costs due to a car accident. Dckt. 86 at ¶ 2. The Modified Plan provides that \$96,008.00 has been paid as of November 2018, and Debtor will make payments of \$8,290.00 for 46 months beginning December 25, 2018. Dckt. 87. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

#### **CHAPTER 13 TRUSTEE’S OPPOSITION**

David Cusick (“the Chapter 13 Trustee”) filed an Opposition on January 25, 2019. Dckt. 95. Trustee opposes the Motion on the basis that service was not provided to the following creditors:

CashCall, Inc.  
Internal Revenue Service

Portfolio Recovery Associates LLC  
Secretary of the Treasury  
Synchrony Bank  
TD Bank US, N.A.  
U.S. Bank NA dba Elan Financial Services  
United States Attorney for the Internal Revenue Service  
United States Department of Justice  
Wells Fargo Bank, N.A., dba WFDS

## **DEBTOR'S REPLY**

Debtor filed a Reply on February 3, 2019. Dckt. 98. Debtor states a Notice was filed to continue the hearing and provide notice to all parties in interest.

Debtor's Notice of Continued Hearing was filed the same day as Debtor's Reply. Dckt. 101. The Amended Proof of Service indicates service was made on the parties previously omitted. Dckt. 100.

## **DISCUSSION**

To address Trustee's grounds for opposing the Motion, Debtor filed an Amended Proof of Service and a Notice of Continued Hearing seeking to *sua sponte* continue the hearing on the Motion. Debtor has not specified a legal basis for the ability of parties to continue a hearing after set on the court's docket. Such a practice presents great risk of abuse of the court's docket.

Here, Trustee has opposed the Motion on the basis that proper service was not provided. Debtor sought to cure the deficient notice by continuing the hearing and providing further notice to all parties in interest. In the interest of judicial economy, the court shall treat Debtor's Notice of Continued Hearing to be an *Ex Parte* request for continuance, and continue the hearing on the Motion to Confirm Modified Plan to March 12, 2019 at 3:00p.m.

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 Harry R. Nash and Josephine Ann Nash ("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 hearing on the Motion to Confirm the Modified Plan is continued to March 12, 2019 at 3:00p.m.

62. [18-27798-E-13](#)      **AE SAETEURN AND JUDY**      **OBJECTION TO CONFIRMATION OF**  
[DPC-1](#)                      **SAETERN**                      **PLAN BY DAVID P. CUSICK**  
   **Mark Shmorgan**                      **1-23-19 [13]**

**Final Ruling:** No appearance at the February 12, 2019 hearing is required.  
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Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor’s Attorney on January 23, 2019. By the court’s calculation, 20 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 -----  
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**The hearing on the Objection to Confirmation of Plan is continued to March 5, 2019 at 2:00p.m.**

The Chapter 13 Trustee, David Cusick (“Trustee”), opposes confirmation of the Plan on the basis that the debtors, Ae Saeteurn and Judy Saetern (“Debtor”), failed to appear at the first Meeting of Creditors held on January 17, 2019. The meeting was continued to February 7, 2019. Trustee further notes the Debtor’s first plan payment will come due before the date of the hearing.

**DISCUSSION**

Trustee’s objections are well-taken.

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 the Chapter 13 Trustee and any creditors who appear represents a failure to cooperate. *See* 11 U.S.C. § 521(a)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

In light of Trustee's request, the court shall continue the hearing on the Objection to Confirmation of Plan to March 5, 2019 at 2:00p.m.

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 hearing on the Objection to Confirmation of Plan is continued to March 5, 2019 at 2:00p.m.

63. [17-24960-E-13](#)      **DOUGLAS/VALERIE LUTES**      **MOTION TO MODIFY PLAN**  
[PGM-3](#)                      **Peter Macaluso**                      **1-3-19 [83]**

**Final Ruling: No appearance at the February 12, 2019 Hearing is required.**

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Local Rule 9014-1(f)(1) Motion—No 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 3, 2019. By the court’s calculation, 40 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion. The defaults of the non-responding parties in interest are entered.

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

Douglas M. Lutes and Valerie L. Lutes (“Debtor”) seek confirmation of the Modified Plan to address unexpected changes in circumstances, including Debtor’s job shutting down due to poor weather and Debtor having to pay increased prescription drug costs after losing health insurance. Dckt. 86. The Modified Plan provides for \$46,050.00 paid through December 2018, and plan payments of \$4,340.00 per month starting on January 25, 2019 for 43 months. Dckt. 85. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

### **CHAPTER 13 TRUSTEE’S OPPOSITION**

David Cusick (“the Chapter 13 Trustee”) filed an Opposition on January 28, 2019. Dckt. 93. The Chapter 13 Trustee asserts that Debtors is \$440.00 delinquent in plan payments under the terms of the proposed modified plan.

## **DEBTORS' RESPONSE**

Debtor filed a response to the Chapter 13 Trustee's Opposition on February 3, 2019. Dckt. 96. Debtor states Debtor will be current in plan payments before the date of the hearing on this Motion.

## **CHAPTER 13 TRUSTEE'S RESPONSE**

The Chapter 13 Trustee filed a Status Update on January 3, 2019. Dckt. 98. The Chapter 13 Trustee states that Debtor is no longer delinquent, and Trustee does not oppose confirmation.

## **DISCUSSION**

Trustee no longer opposes the Motion as Debtor is current under the Modified Plan. 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 Douglas M. Lutes and Valerie L. Lutes ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on January 3, 2019, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick ("the Chapter 13 Trustee") for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

64. [17-23662-E-13](#)      **JOSE ESPINO AND MICHEL**      **MOTION TO MODIFY PLAN**  
[TOG-4](#)                      **REYES**                                      **12-27-18 [81]**  
                                    **Thomas Gillis**

**Final Ruling: No appearance at the February 12, 2019 Hearing is required.**

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 27, 2018. By the court’s calculation, 47 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).

Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion. The defaults of the non-responding parties in interest are entered.

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

Jose Espino and Michel Reyes (“Debtor”) seek confirmation of the Modified Plan because certain of Debtor’s claims were valued higher than anticipated. Dckt. 83. The Modified Plan provides for payments of \$1,004.00 to be paid through February 2019, and then for payments of \$970.00 for the remainder of the plan term. Dckt. 84. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

## **CHAPTER 13 TRUSTEE'S OPPOSITION**

David Cusick (“the Chapter 13 Trustee”) filed an Opposition on January 28, 2019. Dckt. 92. Trustee opposes confirmation on the grounds that Debtor provides for several Class 2 claims in amounts that do not reflect amounts already provided by Trustee. Trustee further opposes confirmation on the basis that Debtor improperly filed updated Schedules as “Amended” rather than “Supplemental.”

## **DEBTOR'S NON-OPPOSITION**

Debtor filed a Non Opposition on February 6, 2019, indicating Debtor will file an Amended Plan. Dckt. 95.

## **DISCUSSION**

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

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by Jose Espino and Michel Reyes (“Debtors”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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