

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

March 10, 2020 at 2:00 p.m.

1.	<u>19-24307-C-13</u> <u>MJD-1</u>	SUSAN DEAN Matthew DeCaminada	MOTION TO CONFIRM PLAN 1-31-20 <u>[33]</u>
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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.

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 31, 2020. By the court’s calculation, 39 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is XXXXX.
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The debtor, Susan Marie Dean (“Debtor”), seeks confirmation of the Amended Plan. The Amended Plan advanced will provide for \$1,510 paid through December 2020, a payment of \$385 in January 2020, and payments of \$500 thereafter. Debtor’s Reply, Dckt. 43. 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 February 24, 2020. Dckt. 40. Trustee opposes confirmation on the following grounds:

1. The plan is unclear as to whether the payment is \$500 in February 2020, or only thereafter.
2. Debtor changed jobs and has not provided pay advices to the Trustee to confirm current income.
3. The plan relies on family support contributions of \$1,200. But, Debtor has not provided evidentiary support to demonstrate this contribution is probable.

DEBTOR'S RESPONSE

Debtor filed a Reply on March 5, 2020. Dckt. 43. Debtor suggests adding language to the order confirming plan to address the payment confusion, and states the 60 days' pay advices have been provided to the Trustee. As to the family support contribution, Debtor notes that the amount is a child support payment from Debtor's former spouse, and states that Debtor's spouse will not sign a declaration attesting to the contribution.

DISCUSSION

The Debtor has addressed most of Trustee's grounds for opposition, but a lingering issue is the certainty of support payments. If those payments of \$1,200 are not reliable, then the plan is clearly not feasible. While Debtor has explained the situation, she has not stated whether payments in the past have always come in.

At the hearing, **XXXXXXXXXXXXXXXXXX**.

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Susan Marie Dean ("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 **XXXXXXXXXXXXXXXXXX**

THRU #3

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 February 6, 2020. By the court's calculation, 33 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.

Creditor Nicole Kruczynski ("Creditor") opposes confirmation of the Plan, arguing as follows:

Due to the fact that Eric Keith Owens has not paid Nicole Kruczynski the court ordered judgement that was entered on 10/04/20 19, nor has Eric Keith Owens included Nicole Kruczynski in the Chapter 13 plan, Nicole Kruczynski Motions the Objection of Confirmation of plan.

DISCUSSION

The Debtor's proposed plan provides for a 0% dividend to unsecured claims. Proof of Claim, No. 8, filed by Creditor indicates her claim is unsecured. Thus, it appears the claim is provided for to the

extent required by the Bankruptcy Code.

Notwithstanding Creditor's Objection, the court has sustained the Trustee's Objection To Confirmation (Dckt. 22), determining that the plan is not confirmable because it provides for unequal monthly payments to a secured creditor.

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

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

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

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 February 12, 2020. 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 plan does not provide equal monthly payments on creditor Southern Cascades Finance Corporation’s claim.
- B. Debtor’s 2018 tax refund from 2018 shows a \$8,493 refund. Trustee requests any confirmed plan clarify future refunds over \$2,000 be paid into the plan.

DISCUSSION

Debtor’s plan provides for creditor Southern Cascades Finance Corporation’s secured claim

by paying \$100 for 19 months and then \$290 until the claim is paid off. 11 U.S.C. § 1325(a)(5)(B)(iii) requires equal monthly amounts be paid on secured claims. Therefore, the plan is not 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.

THRU #6

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on January 29, 2020.. 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). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Value Collateral and Secured Claim of Travis Credit Union ("Creditor") is granted, and Creditor's secured claim is determined to have a value of \$12,659.00.

The Motion filed by Anthony David Morrison and Lisa-Anne Marshall Morrison ("Debtor") to value the secured claim of Travis Credit Union ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 30. Debtor is the owner of a 2015 Chevrolet Cruze 2LT ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$7,500 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).

Debtor explains in Debtor's Declaration that the valuation is based on Kelly Blue Book values, similar local listings, the cost of making the vehicle sale-ready, and the fact that a buyer might negotiate a lower price.

CREDITOR'S OPPOSITION

Creditor filed an Opposition on February 13, 2020. Dckt. 46. Creditor argues the retail value is \$12,659.00 as of the filing date. In support, Creditor filed a Kelly Blue Book report as an Exhibit, properly authenticate by the Declaration of Dianne Coggins. Dckts. 47, 48.

DISCUSSION

The lien on the Vehicle's title secures a non purchase-money loan to secure a debt owed to Creditor with a balance of approximately \$19,693.25. Proof of Claim, No. 3.

The Creditor and Debtor provide fairly different valuations. Creditor's valuation relies solely on the KBB report, whereas Debtor's valuation makes several guesses.

First, Debtor notes that the KBB value is "between \$9,218 to \$11,113." From Creditor's exhibit, the court determines that the KBB value is actually \$12,659.00.

Then, Debtor ignores the KBB report (or goes with the lower end value) and instead relies on two (2) similar listings, one for \$9,950 and the other for \$8553, the latter of which the Debtor concedes has many more miles. No indication is given where these vehicles are listed, or whether there were also similar vehicle listed at a higher price, or whether this was an actual "out-the-door" price. Debtor also does not explain why two listings should be given more weight than the KBB value.

Finally, Debtor adds that the price must be further knocked down because "in [Debtor's] experience (having purchased vehicles from dealers in the past), the dealer incurs a significant cost to make a vehicle sale-ready," and "it is common practice for a buyer to negotiate a lower dealer sale price for a vehicle, possibly reducing the sale price by \$1,000 or more." Dckt. 30. But, no testimony is given about what problems the Vehicle has that would need to be repaired. Thus, Debtor is purely speculating as to these costs.

The court finds Creditor's valuation to be more credible. Creditor's secured claim is determined to be in the amount of \$12,659.00, 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 Anthony David Morrison and Lisa-Anne Marshall Morrison ("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 Travis Credit Union (“Creditor”) secured by an asset described as 2015 Chevrolet Cruze 2LT (“Vehicle”) is determined to be a secured claim in the amount of \$12,659.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$12,659.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

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

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

Sufficient Notice 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 29, 2020.. 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). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Value Collateral and Secured Claim of Travis Credit Union (“Creditor”) is granted, and Creditor’s secured claim is determined to have a value of \$22,927.00.

The Motion filed by Anthony David Morrison and Lisa-Anne Marshall Morrison (“Debtor”) to value the secured claim of Travis Credit Union (“Creditor”) is accompanied by Debtor’s declaration. Declaration, Dckt. 36. Debtor is the owner of a 2015 Traverse LT (“Vehicle”). Debtor seeks to value the Vehicle at a replacement value of \$15,000.00 as of the petition filing date. As the owner, Debtor’s opinion of value is evidence of the asset’s value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Debtor explains in Debtor’s Declaration that the valuation is based on Kelly Blue Book values, similar local listings, the cost of making the vehicle sale-ready, and the fact that a buyer might negotiate a lower price.

CREDITOR’S OPPOSITION

Creditor filed an Opposition on February 13, 2020. Dckt. 50. Creditor argues the retail value is \$22,927.00 as of the filing date. In support, Creditor filed a Kelly Blue Book report as an Exhibit, properly authenticate by the Declaration of Dianne Coggins. Dckts. 51, 52.

DISCUSSION

The lien on the Vehicle's title secures a non-purchase-money loan to secure a debt owed to Creditor with a balance of approximately \$27,325.69. Proof of Claim, No. 5.

The Creditor and Debtor provide fairly different valuations. Creditor's valuation relies solely on the KBB report, whereas Debtor's valuation makes several guesses.

First, Debtor notes that the KBB value is "between \$15,034 to \$17,143." It is unclear whether this is a retail value. From Creditor's exhibit, the court determines that the KBB value is actually \$22,927.00.

Then, Debtor ignores the KBB report (or goes with the lower end value) and instead relies on two (2) similar listings, one for \$17,999 and the other for \$15,984. No indication is given whether there were also similar vehicle listed at a higher price, or whether these were actual "out-the-door" prices. Debtor also does not explain why two listings should be given more weight than the KBB value.

Finally, Debtor adds that the price must be further knocked down because "in [Debtor's] experience (having purchased vehicles from dealers in the past), the dealer incurs a significant cost to make a vehicle sale-ready," and "it is common practice for a buyer to negotiate a lower dealer sale price for a vehicle, possibly reducing the sale price by \$1,000 or more." Dkt. 30. But, no testimony is given about what problems the Vehicle has that would need to be repaired. Thus, Debtor is purely speculating as to these costs.

Creditor's secured claim is determined to be in the amount of \$22,927.00, 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 Anthony David Morrison and Lisa-Anne Marshall Morrison ("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 Travis Credit Union ("Creditor") secured by an asset described as 2015 Traverse LT ("Vehicle") is determined to be a secured claim in the amount of \$22,927.00, 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 \$22,927.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

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

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

Sufficient Notice 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, 2020. By the court’s calculation, 41 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied.

The debtor, Anthony David Morrison and Lisa-Anne Marshall Morrison (“Debtor”), seeks confirmation of the Amended Plan. The Amended Plan provides for \$3,920 paid through January 2020, and payments of \$980 thereafter. Amended Plan, Dckt. 42. 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 February 25, 2020. Dckt. 58. Trustee opposes confirmation on the following grounds:

1. The plan relies on valuing two secured claims held by Travis Credit Union.
2. Trustee disputes the use of the flat attorney fee unless services for stay relief and lien avoidance are included.

DISCUSSION

A review of the docket shows the court granted Debtor's two motions to value the secured claims of Travis Credit Union, but valued those claims at several thousand dollars above the requested valuation. Therefore, the plan is no longer feasible. 11 U.S.C. § 1325(a)(6).

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Anthony David Morrison and Lisa-Anne Marshall Morrison ("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 Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on January 8, 2020. 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 ~~XXXXX~~.

The debtor, James Edward Moren (“Debtor”), seeks confirmation of the Amended Plan. The Amended Plan provides for \$16,875.00 paid through December 2019, payments of \$6,130.00 for the remaining Plan Administrator term, and for a 0% dividend on unsecured claims totaling \$300,000.00. Amended Plan, Dckt. 38. 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 February 10, 2020. Dckt. 42. Trustee opposes confirmation on the basis that conflicting information has been provided, with the Statement of Financial Affairs reporting that all income from the past two years is from a business, while Schedule I only shows wages.

Trustee also notes 6 months of profit and loss statements for the business have been requested, but not provided.

FEBRUARY 25, 2020 HEARING

At the prior hearing the court continued the hearing to allow Debtor to cure a one-payment delinquency. Dckt. 44.

DISCUSSION

At the hearing, the parties reported whether Debtor is current in payments **XXXXXXXXXXXXXXXXXX**.

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, James Edward Moren (“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 **XXXXXX**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on February 18, 2020. By the court’s calculation, 21 days’ notice was provided. 14 days’ notice is required.

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

The Motion to Value Collateral and Secured Claim of One Main Financial Group, LLC (“Creditor”) is XXXXXXXXXXXX

The Motion filed by Tresa Lynn McBride (“Debtor”) to value the secured claim of One Main Financial Group, LLC (“Creditor”) is accompanied by Debtor’s declaration. Debtor is the owner of a 2010 Toyota Yaris (“Vehicle”). Debtor seeks to value the Vehicle at a replacement value of \$4,898.00 as of the petition filing date. As the owner, Debtor’s opinion of value is evidence of the asset’s value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

DISCUSSION

The hanging paragraph of 11 U.S.C. § 1325(a)(9) prohibits valuing a claim secured by a personal use vehicle purchased less than 910 days prior to filing.

The Motion and supporting pleadings do not provide a date the obligation was incurred. Debtor’s Declaration provides a conclusion that the debt was incurred more than 910 days prior to filing.

Proof of Claim, No. 1, filed by the Creditor includes a copy of the Loan Agreement, which states "DATE 04/03/19." That date is also included on the Lien and Title Information sheet.

Debtor's bare conclusion that more than 910 days passed does not ring credible when the court has a copy of the agreement showing the debt was incurred in 2019.

At the hearing, counsel for Debtor explained what basis he and the Debtor had for representing to the court that the agreement was executed more than 910 days prior to filing
XXXXXXXXXXXXXXXXXX.

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 Tresa Lynn McBride ("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 XXXXXXXXXXXXXXXX

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 on February 12, 2020. 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. Debtor did not attend the February 6, 2020, Meeting of Creditors.
- B. Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year .
- C. Debtor has not provided Trustee with employer payment advices for the sixty-day period preceding the filing of the petition .
- D. Debtor has nonexempt assets totaling \$309,287, but is paying only a 0% dividend. Therefore, Debtor's plan fails the Chapter 7 Liquidation Analysis.

- E. Debtor's Plan is based upon a plan form that is no longer effective now that the court has adopted a new plan form as of November 9, 2018.
- F. Debtor has listed having a second job with "unknown" income.

DISCUSSION

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

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

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

Debtor has nonexempt assets totaling \$309,287, but is paying only a 0% dividend. Therefore, Debtor's plan fails the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4).

Debtor's Plan is based upon a plan form that is no longer effective now that the court has adopted a new plan form as of November 9, 2018. The Plan is based on a prior plan form, which is a violation of Federal Rule of Bankruptcy Procedure 3015.1 and General Order 17-03.

Additionally, Debtor has listed having a second job, but has not listed income therefor.

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

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on February 24, 2020. By the court’s calculation, 15 days’ notice was provided. 14 days’ notice is required.

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

The Motion to Impose the Automatic Stay is denied.

Deandra Renee Jackson (“Debtor”) seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) imposed in this case. Debtor has had four (4) cases dismissed within the year prior to filing this case.

Debtor in her Declaration explains her prior case was dismissed because her attorney failed to file all documents timely, and due to the attorney’s lack of communication, distance, and limited staff. Dckt. 13.

Debtor testifies she has now hired Pete Macaluso as counsel, and is “confident of his ability to represent me, the communication between us, and proposition of a solid Chapter 13 Plan . . .” Id.

TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on February 26, 2020. Dckt. 15. Trustee argues Debtor has not rebutted the presumption of bad faith, has not put forward a feasible plan, and has not addressed the proper code section.

CREDITOR'S OPPOSITION

Creditor Maria Padilla-Angel ("Creditor") filed an Opposition on March 6, 2020. Dckt. 26. The Creditor is a lessor of real property, and argues that three bankruptcy cases were filed after Debtor executed her lease on October 10, 2019. Creditor provides detailed overview of conflicting information the Debtor provided as to where her principal residence is in the current and recent filings.

APPLICABLE LAW

When stay has not gone into effect pursuant to 11 U.S.C. § 362(c)(4), a party in interest may request within 30 days of filing that the stay take effect as to any or all creditors (subject to such conditions or limitations as the court may impose), after notice and a hearing, only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed. 11 U.S.C. § 362(c)(4)(B).

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

(I) 2 or more previous cases under this title in which the individual was a debtor were pending within the 1-year period;

(II) a previous case under this title in which the individual was a debtor was dismissed within the time period stated in this paragraph after the debtor failed to file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney), failed to provide adequate protection as ordered by the court, or failed to perform the terms of a plan confirmed by the court; or

(III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under this title, or any other reason to conclude that the later case will not be concluded, if a case under chapter 7, with a discharge, and if a case under chapter 11 or 13, with a confirmed plan that will be fully performed; . . .

11 U.S.C. § 362(c)(4)(D).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); *see also* Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-10 (2008). An important indicator of good faith is a realistic prospect of success in

the second case, contrary to the failure of the first case. *See, e.g., In re Jackola*, No. 11-01278, 2011 Bankr. LEXIS 2443, at *6 (Bankr. D. Haw. June 22, 2011) (citing *In re Elliott-Cook*, 357 B.R. 811, 815–16 (Bankr. N.D. Cal. 2006)). Courts consider many factors—including those used to determine good faith under §§ 1307(c) and 1325(a)—but the two basic issues to determine good faith under § 362(c)(3) are:

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

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

Review of Prior Filings

Debtor has an extensive case history, listed as follows:

Case No.	Filing Date	Date Dismissed
04-23720	4/12/2004	7/22/2004 (Ch. 7 discharge received)
06-24743	11/13/2006	10/24/2008
09-47849	12/21/2009	7/30/2012
12-34671	8/10/2012	12/18/2012
13-27271	5/29/2013	2/7/2014 (Ch. 7 discharge received)
14-30880	11/3/2014	2/20/2015
15-21311	2/20/2015	6/2/2017
17-24770	7/20/2017	4/27/2019
19-22901	5/6/2019	9/27/2019
19-26376	10/11/2019	10/29/2019
19-27160	11/18/2019	2/17/2020

From the above, it is clear Debtor is a serial filer, and a permanent resident of the Bankruptcy Court. Debtor has completed two Chapter 7 cases, both with no distribution of assets. Debtor has filed 10 Chapter 13 cases, with one pending and 9 dismissed for various failures to comply with the Bankruptcy Code.

Argument provided in Debtor’s Motion

The Motion does not provide a robust discussion of Debtor’s prior cases, why they failed, and what changed for this case. The Motion states:

Good cause exists for the granting of the Motion to Impose Automatic Stay as to all creditors in this case. The imposition is necessary to protect the Debtor's assets, absent the instant filing as the Debtor's current case overcomes any presumption of bad faith.

Based on the aforementioned elements, the instant case was filed in order to protect Debtor's vehicle from repossession action. The Debtor is a cook for the Tracy Unified School District, and begins March 1, 2020, with a current gross monthly income of \$5,000.00, deductions of \$950.00, and a net monthly income of \$4,050.00.

Further, Debtor's Schedule I and B22C reflect that she is earning enough wages and money to cover all her necessary obligations in addition to the proposed Chapter 13 plan. The Debtor reflects reasonable and necessary expenses of approximately \$3,725.00, allowing for a monthly plan payment of \$325.00, the ability to fund the current plan, and obtain a discharge (See *In re Charles*, 334 B.R. 207, 219 (Bank. S.D.Tex. 2005)).

Lastly, there is no indication that the Debtor engaged in any type of scheme or other operation to abuse the bankruptcy process. Refer to Declaration of Debtor filed herewith.

Motion, Dckt. 10.

The above is merely a collection of facts and conclusion, with no analysis. Debtor's counsel concludes good cause exists to grant the motion, and there is no indication of a scheme to abuse the bankruptcy process. It is unclear why Debtor's counsel thinks so. The conclusions seem to be a part of a template form, which counsel has just filed in hopes the court will do his work for him.

The facts listed are presumably included to show Debtor is capable of prosecuting her case. But, the prior case history shows otherwise, and Debtor's counsel has not at all explained that history away.

Information Provided in Debtor's Declaration

Some of the Debtor's arguments are only in her declaration. As the court discussed above (and not stated with particularity in the Motion), the Debtor argues:

1. **I filed my previous 2019 Chapter 13 bankruptcy case** because I was not able to meet with **my counsel personally because she was always too busy**. I sent her all the documents and awaited the continued meetings. **Because she blew the first case she agreed to represent me in the second case. When that case was filed she had all the documents, then on October 31, 2019 I found out that she had failed to submit the documents timely and again the second case was dismissed.**

2. I am refiling bankruptcy due to financial hardship. **The last case failed because**

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my attorney did not take the time to insure that the Trustee had all the documents timely.

3. Since my previous case was dismissed, my circumstances have changed as I have taken a job with the Tracy School District, which is a steady employee position rather than an independent contractor running to each school each day of the week.

4. I have acquired any new debt since my previous case was dismissed.

5. I understand that I have filed a number of bankruptcy cases in my lifetime and understand that I must just clear these debts and pay for my car. I am 55 years old and never thought that I would be seeking protection yet again. I thought that my previous cases were dismissed due to a lack of communication with my attorney, the distance between us, and the limited staff support that she had which are now remedied.

6. I have hired attorney, Peter Macaluso, and I am confident of his ability to represent me, the communication between us, and proposition of a solid Chapter 13 Plan that will allow me to pay my creditors to the best of my ability, keep my car, and getting to work everyday.

Dckt. 13 (emphasis added).

In sum, Debtor argues her prior case failed because of her attorney, and now she has a new attorney, and she has confidence in his abilities.

These arguments are not well-taken. First, there is no actual detail provided. Debtor does not say what documents were provided to her counsel and not filed.

But, more glaring, Debtor does not explain why—if dismissal was solely her counsel's fault—she has had a total of 9 dismissed Chapter 13s. Debtor has not explained why, if everything is her counsel's fault, she received the extraordinary relief of a Chapter 7 discharge twice, and still had to file 10 Chapter 13 cases.

Debtor argues she is confident in her current counsel's ability. But, Debtor has already employed that counsel in one of her many failed cases, no. 17-24770.

It is Debtor's burden to rebut a presumption of bad faith. Debtor has not done that.

Conclusion

Debtor has not sufficiently rebutted the presumption of bad faith under the facts of this case and the prior cases for the court to impose the automatic stay.

Debtor has been in bankruptcy nearly every year for the past 16 years. With 9 dismissed Chapter 13 cases and two no-asset Chapter 7s, Debtor's sole argument is that her attorney in the recent

prior cases failed her. That argument is disingenuous.

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 Impose the Automatic Stay filed by Deandra Renee 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 is denied.

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 February 19, 2020. 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 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, Walter Edison Burke and Linda Sue Burke ("Debtor"), omitted the suffix "jr." from Debtor's petition as to Walter.
- B. Debtor's plan includes the secured claim of One Main Financial as a Class 4 claim. But, Trustee's review of the agreement shows that agreement will mature during the life of the plan.

DISCUSSION

The Plan proposes to pay a 2 percent dividend to unsecured claims, which total \$22,350.00. But, during the life of the plan the secured claim of One Main Financial, treated as a Class 4 claim, will

mature and Debtor will have additional funds to put into the plan, which the plan does not require to be paid in. Because this plan does not provide for all Debtor's disposable income to be paid through the life of the plan, the court may not approve the plan. 11 U.S.C. § 1325(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.

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 February 12, 2020. 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 debtors, Louie Graham Gilligan and Shardalai Monique Gilligan (“Debtor”) did not appear at the February 6, 2020, Meeting of Creditors.
- B. Debtor’s plan proposes valuing the secured claim of Toyota Motor Credit. A motion for the purpose is set for hearing February 25, 2020.
- C. Debtor’s did not list a prior case filed in 2018 on Debtor’s petition.

DISCUSSION

On February 25, 2020, the court granted Debtor's Motion and valued the secured portion of Toyota Motor Credits's claim at \$16,300.00.

However, the Debtor has not accurately filled out Debtor's petition (leaving out a prior bankruptcy filing), and did not attend the February 6, 2020, Meeting of Creditors. Appearance at the Meeting is mandatory. *See* 11 U.S.C. § 343. Attempting to confirm a plan while failing to appear and be questioned by Trustee and any creditors who appear represents a failure to cooperate, and Debtor's failure to list prior cases further shows lack of cooperation. *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.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on January 20, 2020. By the court’s calculation, 50 days’ notice was provided. 14 days’ notice is required.

The Motion to Reconsider 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 Reconsider is XXXXXXXXXX

The debtor Michael J Petkus’ (“Debtor”) counsel Thomas A. Moore (Debtor’s Counsel) filed this Motion To Reconsider an order granting motion To disgorge fees, which was filed by the Chapter 13 Trustee, David Cusick (“Trustee”).

The Trustee’s motion was filed October 24, 2019, and argued that Debtor’s Counsel was paid \$6,000 up front when a flat fee was not permitted due to limitations on representation as to stay relief and lien avoidance actions. Dckt. 107.

Debtor’s Counsel did not respond in writing to the Trustee’s Motion, and the court granted the Motion on November 26, 2019, and required Debtor’s Counsel pay \$6,000 back to Debtor by December 25, 2019. Dckts. 101, 103.

Debtor’s Counsel argues in the Motion To Reconsider that (1) it was a mistake to exclude services stay relief and lien avoidance actions, because those services were covered; (2) Debtor’s

Counsel's associate did appear at the Meeting of Creditors; (3) Debtor's Counsel responded to the Trustee's Motion by "filing reply's and opposition and working with the Trustees office for confirmation of the Plan;" (4) at the hearing Debtor's Counsel was given until December 25, 2019 to submit a detailed fee application; (5) because Debtor's case was a self-employment case, it was very complex and entitled Debtor's Counsel to the \$6,000 flat fee.

TRUSTEE'S RESPONSE

Trustee filed a Response on February 25, 2020, arguing that the court issued a final order on Trustee's Motion, and no grounds are given for reconsideration.

Trustee also notes Trustee has not received the \$6,000.00.

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).

Here, no argument is provided for reconsideration. The court cannot divine what reason counsel had to ignore the Trustee's Motion rather than filing an opposition or response.

At the December 2019 hearing the court was sympathetic (despite no explanation for the lack of response being given) and gave Debtor's Counsel until December 25, 2019, to file a motion for fees. A month later, Debtor's Counsel filed this Motion To Reconsider which is actually a motion for approval of fees, without any explanation for the delay.

The Trustee has reported that no monies were turned over despite Debtor's Counsel being ordered to do so. Thus, Debtor's Counsel violated this court's December 6, 2020, order. Dckt. 103. The present Motion does not explain what basis there is to ignore this court's order.

The billing records filed by Debtor's Counsel do not reflect an “especially difficult” case with “so many extra moving parts.” Dckt. 109. But, the current motion is not one for the approval of fees—it is a Motion To Reconsider (despite no grounds having been provided).

The Motion will be denied without prejudice because no grounds for relief were stated with particularity in the Motion, as required by Federal Rule of Bankruptcy Procedure 9013.

At the hearing, Debtor's Counsel explained his clear violation of this court's order and whether an Order To Show Cause should be issued to determine an appropriate sanction

XXXXXXXXXXXXXXXXXX.

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 Reconsider filed by Michael J Petkus (“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 **XXXXXXXXXXXXXXXXXX**.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on February 23, 2020. By the court’s calculation, 16 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.

Deshaunna Tranise Payne (“Debtor”) seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor’s second bankruptcy petition pending in the past year. Debtor’s prior bankruptcy case (No. 19-20895) was dismissed on January 23, 2020, after Debtor fell delinquent in plan payments. *See* Order, Bankr. E.D. Cal. No. 19-20895, Dckt. 56, January 23, 2020. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because her plan relied on contributions from Debtor’s two daughters, one of which moved out.

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 Deshaunna Tranise Payne (“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.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on January 29, 2020. By the court's calculation, 13 days' notice was provided. The court issued an order shortening the time required for notice to 13 days. Dckt. 36.

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

-----.

The Objection to Confirmation of Plan is granted.

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

- A. Debtor's plan proposes valuing the secured claim of TD Auto Finance, but the court has not issued an order valuing that claim yet.
- B. The claim of Chase Bank is listed as a Class 1 and Class 4.
- C. Debtor has not provided a copy of Debtor's recent tax return.
- D. The Trustee has requested and Debtor has yet to provide a copy of the

revocable living trust listed on Schedule B.

FEBRUARY 11, 2020 HEARING

At the February 11, 2020, the Trustee reported some documentation had been provided, and some issues resolved. The hearing was continued to allow the Objection to be heard alongside Debtor's Motion seeking to value secured claim of TD Auto Finance. Dckt. 40.

FEBRUARY 25, 2020 HEARING

At the continued hearing, the Trustee reported he was still waiting on a few documents to be provided by Debtor, and the parties requested further continuance. Dckt. 44.

DISCUSSION

A review of the docket shows the court has granted the Debtor's Motion To Value secured claim of TD auto Finance. Therefore, it appears all grounds for opposition have been resolved.

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on February 13, 2020. By the court’s calculation, 26 days’ notice was provided. 14 days’ notice is required.

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

The Motion to Value Collateral and Secured Claim of Santander Consumer USA, Inc. (“Creditor”) is granted, and Creditor’s secured claim is determined to have a value of \$12,025.00.

The Motion filed by Francine V. Mitchell (“Debtor”) to value the secured claim of Santander Consumer USA, Inc. (“Creditor”) is accompanied by Debtor’s declaration. Declaration, Dckt. 16. Debtor is the owner of a 2013 Toyota Avalon (“Vehicle”). Debtor seeks to value the Vehicle at a replacement value of \$12,025.00 as of the petition filing date. As the owner, Debtor’s opinion of value is evidence of the asset’s value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

DISCUSSION

The lien on the Vehicle’s title secures a purchase-money loan incurred on November 2016, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$21,227.61. Proof of Claim, No. 2. Therefore, Creditor’s claim secured by a

lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of \$12,025.00, 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 Francine V. Mitchell ("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 Santander Consumer USA, Inc. ("Creditor") secured by an asset described as 2013 Toyota Avalon ("Vehicle") is determined to be a secured claim in the amount of \$12,025.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$12,025.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on February 3, 2020. By the court’s calculation, 36 days’ notice was provided. 14 days’ notice is required.

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

The Motion to Value Collateral and Secured Claim of Wells Fargo Bank, N.A. (“Creditor”) is granted, and Creditor’s secured claim is determined to have a value of \$8,451.00

The Motion filed by Ann Medina (“Debtor”) to value the secured claim of Wells Fargo Bank, N.A. (“Creditor”) is accompanied by Debtor’s declaration. Declaration, Dckt. 10. Debtor is the owner of a 2011 Mercedes-Benz E350 (“Vehicle”). Debtor seeks to value the Vehicle at a replacement value of \$8,451.00 as of the petition filing date. As the owner, Debtor’s opinion of value is evidence of the asset’s value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

DISCUSSION

The lien on the Vehicle’s title secures a purchase-money loan incurred on 2016, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$11,697.00. Declaration, Dckt. 10. Therefore, Creditor’s claim secured by a lien on the

asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of \$8,451.00, 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 Ann Medina ("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 Wells Fargo Bank, N.A. ("Creditor") secured by an asset described as 2011 Mercedes-Benz E350 ("Vehicle") is determined to be a secured claim in the amount of \$8,451.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$8,451.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

THRU #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 motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee and Office of the United States Trustee on February 6, 2020. By the court's calculation, 33 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice).

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

The Bankruptcy Code permits Martha Masiel Ramirez as the 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 commonly known as 3629 Highway 20, Browns Valley, California ("Property").

The proposed purchaser of the Property is Miguel Torres and Marisol Aceves (a general partnership), and the proposed purchase price is \$25,000.

DISCUSSION

Two things stick out when reviewing the agreement, which was filed as Exhibit 1. Dckt. 109. First, the agreement is not signed by Marisol Aceves. Instead, it is signed twice by the Debtor. It is unclear what connection Debtor has with the proposed buyer.

Second, the agreement is expressly made by warranty deed. Exhibit 1 at ¶ 8, Dckt. 109. A warranty deed follows from an agreement on the part of the vendor to give the “usual covenants.” 12 Witkin, Summary 11th Real Prop § 269 (2019). In California, use of the word “grant” in any conveyance generally does the same, and includes the covenant against encumbrances. Cal. Civ. Code § 1113. An incumbrance is any right to or interest in land which may subsist in third persons to the diminution of the value of the estate to the tenant, but consistently with the passing of the fee. Cal. Civ. Code § 1114; Fraser v. Bentel, 161 Cal. 390, 394, 119 P. 509, 511 (1911).

In this instance, Proof of Claim, No 7. filed by Yuba County Tax Collector shows a tax lien of roughly \$420,000.00 encumbering the Property. It is doubtful that the proposed buyer wants to purchase for \$25,000 property that is subject to a \$420,000 lien—meaning, it is likely this was not disclosed to the buyer and Debtor has breached the warranty deed.

At the hearing, **xxxxxxxxxxxxxxxx**.

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 Martha Masiel Ramirez as the 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 **xxxxxxxxxxxx**

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

Local Rule 9014-1(f)(1) Motion—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 13, 2020. By the court's calculation, 51 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 XXXXXXXXXXXXXXXXXX

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

1. the debtor, Marth Ramierez ("Debtor"), is \$4,484.98 delinquent in plan payments.
2. Debtor has no plan pending, since her prior plan was denied confirmation on November 26, 2020.

SUTTER COUNTY TAX COLLECTOR'S STATEMENT

Sutter County Tax Collector ("Sutter") filed a statement in support of dismissal on February 11, 2020. Dckt. 121. Sutter points out this is the Debtor's sixth bankruptcy case filed since 2009, and Debtor has been in bankruptcy nearly continuously for nearly 11 years. Sutter notes it has filed its own dismissal motion which seeks a bar on filing a new case.

MARCH 4, 2020 HEARING

The court granted a short continuance at the prior hearing. At the prior hearing, the court made the following observations:

Since the Trustee filed this motion, the Debtor filed a new plan (Dckt.

88), which was then denied confirmation at hearing February 25, 2020. In denying confirmation, the court noted that the Debtor had not disclosed all real properties on her schedules, had not accounted for a \$37,486.54 refund given after the recent dismissal of her prior case, and had not provided the Trustee all 11 U.S.C. § 521 documents, and has not completely filled out her initial filing documents. The Court also observed that while Debtor's plan relies on marketing several properties, it is entirely unclear what steps if any have been taken to do that, with no professionals having been hired to date.

The first hearing in this case was on the Debtor's Motion To Extend the Automatic Stay, heard on October 1, 2020. Dckt. 3. At that hearing (and many other hearings thereafter), the court discussed Debtor's long case history with the Debtor and stressed the importance of retaining counsel and prosecuting this case.

Now, 5 months (roughly 150 days) after that hearing, no potentially confirmable plan is on file, Debtor's schedules are not completely and accurately filled out, and not all 11 U.S.C. § 521 documents have been provided.

Much of Debtor's energy thus far has been spent opposing the sale of her primary residence. In considering whether to grant relief from stay as to the property, the court continued the hearing to allow Debtor to explain how this case was going to be prosecuted. Despite the continuance, Debtor focused all attention on why the secured creditor should not be allowed to foreclose, and did not argue why relief from stay was not warranted, or how she would prosecute her case.

The court notes that the undisclosed property was clarified at the hearing to have been misidentified in Debtor's schedules as "629 Hwy 20, Marysville, CA 9590," whereas the property is actually in Browns Valley. Thus, the ownership of that property was disclosed.

DISCUSSION

Debtor filed a Second Amended Plan on March 2, 2020 (and then a duplicate on March 3, 2020). Dckts. 126, 130.

In reviewing the plan, and the claims filed in this case thus far, the Plan grossly understates claims to be paid and is not feasible on its face.

Proof of Claim, Nos. 4, 5, 6, and 7 are all for delinquent taxes. The four claims total nearly \$480,000.00. \$440,000 of that debt is secured debt.

\$420,000 is owed only to Yuba County Tax Collector. The plan provides for only \$253,797 to that creditor.

What is very glaring is that Debtor, who has been in and out of bankruptcy, has not been paying her property taxes for a very long time. That casts even more doubt as to the feasibility of any plan.

Debtor has a motion to sell property known as 3629 Highway 20, Browns Valley, California,

March 10, 2020 at 2:00 p.m.

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set for hearing March 10, 2020. Reviewing Proof of Claim, No. 7, shows that property is entirely encumbered by Yuba County Tax Collector's lien.

At the hearing, **XXXXXXXXXXXXXXXXXX**.

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 **XXXXXXXXXXXXXXXXXX**

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.

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, Chapter 13 Trustee, and Office of the United States Trustee on February 11, 2020. By the court's calculation, 28 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 ~~XXXXX~~

Sutter County Tax Collector ("Sutter") filed this Motion seeking dismissal of the case, and the injunctive relief of a 180 bar on future filings.

Sutter argues the relief sought is warranted given Debtor's history of case filings, the present case being Debtor's sixth since 2009 and no case filed to date having a confirmed Chapter 13 Plan, which Sutter argues is demonstrative of bad faith. Sutter argues further that Debtor has failed to provide all necessary documents to the Trustee, is not making preconfirmation plan payments timely, and has not proposed a feasible plan.

DISCUSSION

Request for Injunctive Relief

11 U.S.C. § 349 provides that dismissal of a case does not bar discharge in a later case of debts dischargeable in the dismissed case unless the court, for cause, orders otherwise. The phrase "[u]nless the court, for cause, orders otherwise" in Section 349(a) authorizes the bankruptcy court to dismiss the case with prejudice. In re Leavitt, 171 F.3d 1219, 1224 (9th Cir. 1999).

The language of 11 U.S.C. § 349 also specifies the remedy of dismissal with prejudice: dismissal of a case with prejudice does bar the discharge, in a later case, of debts that were dischargeable in the case dismissed. This is distinct from the injunctive relief of a bar on filing. A well-known treatise provides the following discussion on this topic:

A dismissal with prejudice must be distinguished from an order prohibiting the debtor from filing a bankruptcy case for some period of time in the future. The former determines whether debts owed at the time of filing of the original bankruptcy petition can ever be discharged, but does not prevent the debtor from commencing a subsequent case that would otherwise be permitted by the Code. The latter does not affect whether particular debts can be discharged, but determines whether the debtor has access to the bankruptcy court in the future. Bankruptcy courts have, on occasion, enjoined the filing of a second petition for a period of time, usually six months, when it was clear that the debtor was trying to circumvent the attempts of creditors to modify the automatic stay in the original case. Similarly, courts have refused to permit repeated filings by a debtor for the purpose of thwarting foreclosure on real property when the stay had been lifted in the dismissed case.

3 Collier on Bankruptcy P 349.02 (16th 2019)(emphasis added).

Federal Rule of Bankruptcy Procedure 7001(7) provides that a proceeding to obtain an injunction or other equitable relief is an adversary proceeding.

Where a party requests relief necessary to be heard in an adversary proceeding, the court can (1) entertain the relief properly requested in a contested matter only and let movant file a adversary proceeding for the remaining relief; (2) deny the motion outright because it seeks relief in a procedurally incorrect manner; or (3) accept the procedurally incorrect requests for relief at face value and, pursuant to its obligation to construe the rules to secure the just, speedy, and inexpensive determination of every case and proceeding, deem the contested matter to be an adversary proceeding. In re Van Ness, 399 B.R. 897, 908 (Bankr. E.D. Cal. 2009). The choice among the alternatives is within the discretion of the court. Id.

At the hearing, Sutter explained whether this motion should be construed to be an adversary complaint, and whether Sutter should be required to pay an appropriate filing fee **XXXXXXXXXXXXXXXXXX**.

Dismissal of the Case

The court continued the Trustee's Motion To Dismiss the case (Dckt. 81) to be heard alongside Debtor's Motion To Sell and this Motion. At the prior hearing on Trustee's Motion, the court noted Debtor had not provided all 11 U.S.C. § 521 documents and had not accounted for a \$37,486.54 refund given after the recent dismissal of her prior case.

Since the prior hearing, Debtor filed a Second Amended Plan on March 2, 2020 (and then a duplicate on March 3, 2020). Dckts. 126, 130.

In reviewing the plan, and the claims filed in this case thus far, the Plan grossly understates claims to be paid and is not feasible on its face.

Proof of Claim, Nos. 4, 5, 6, and 7 are all for delinquent taxes. The four claims total nearly \$480,000.00. \$440,000 of that debt is secured debt.

\$420,000 is owed only to Yuba County Tax Collector. The plan provides for only \$253,797 to that creditor.

What is very glaring is that Debtor, who has been in and out of bankruptcy, has not been paying her property taxes for a very long time. That casts even more doubt as to the feasibility of any plan.

Debtor has a motion to sell property known as 3629 Highway 20, Browns Valley, California, set for hearing March 10, 2020. Reviewing Proof of Claim, No. 7, shows that property is entirely encumbered by Yuba County Tax Collector's lien.

At the hearing, **xxxxxxxxxxxxxxxx**.

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 Sutter County Tax Collector ("Sutter"), 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 **xxxxx**

FINAL RULINGS

21. [19-22991-C-13](#) TASHA ROBINSON MOTION TO MODIFY PLAN
[DJC-2](#) David Johnston 2-4-20 [26]

Final Ruling: No appearance at the March 10, 2020, hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on February 4, 2020. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Tasha Renee Robinson ("Debtor"), has filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response indicating non-opposition on February 24, 2020. Dckt. 31. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the

March 10, 2020 at 2:00 p.m.
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debtor, Tasha Renee Robinson (“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 February 4, 2020, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

Final Ruling: No appearance at the March 10, 2020, hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on January 22, 2020. 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.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Marcus Da Mone Buckner ("Debtor") has provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response indicating the plan appears feasible on February 25, 2020. Dckt. 84. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Marcus Da Mone Buckner ("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 22, 2020, is confirmed. Debtor's Counsel shall

prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Final Ruling: No appearance at the March 10, 2020, hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 7, 2020. By the court’s calculation, 63 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Julie Marie Salcedo (“Debtor”), has filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Response indicating non-opposition on February 24, 2020. Dckt. 69. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Julie Marie Salcedo (“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 as Exhibit A on January 7, 2020 (Dckt. 61), is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

Final Ruling: No appearance at the March 10, 2020, hearing is required.

Local Rule 9014-1(f)(2) Objection.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on February 12, 2020. 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 is overruled as moot.

The Chapter 13 Trustee, David Cusick (the "Trustee"), objects to confirmation of the debtor, Oreda Hagy's ("Debtor") Chapter 13 plan. Debtor filed a Notice of Conversion on March 2, 2020, however, converting the case to a proceeding under Chapter 7. Dckt. 44. Debtor may convert a Chapter 13 case to a Chapter 7 case at any time. 11 U.S.C. § 1307(a). The right is nearly absolute, and the conversion is automatic and immediate. FED. R. BANKR. P. 1017(f)(3); *In re Bullock*, 41 B.R. 637, 638 (Bankr. E.D. Penn. 1984); *In re McFadden*, 37 B.R. 520, 521 (Bankr. M.D. Penn. 1984). Debtor's case was converted to a proceeding under Chapter 7 by operation of law once the Notice of Conversion was filed on March 2, 2020. *McFadden*, 37 B.R. at 521.

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

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

The Objection to Confirmation filed by the Chapter 13 Trustee, David Cusick (the "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 as moot.

Final Ruling: No appearance at the March 10, 2020, hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on January 24, 2020. 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 Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, George Francis Nichols and Darlene Frances Nichols (“Debtor”) has provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Non-Opposition / Response indicating non-opposition February 24, 2020. Dckt. 28. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, George Francis Nichols and Darlene Frances Nichols (“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 24, 2020, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Final Ruling: No appearance at the March 10, 2020, hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on February 3, 2020. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

The Objection to Claimed Exemptions 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 Objection to Claimed Exemptions is sustained, and the exemptions are disallowed in their entirety.

David Cusick ("the Chapter 13 Trustee") objects to Ricardo Castro's ("Debtor") use of the California exemptions without the filing of the spousal waiver required by California Code of Civil Procedure § 703.140. California Code of Civil Procedure § 703.140(a)(2), provides:

If the petition is filed individually, and not jointly, for a spouse, the exemptions provided by this chapter other than the provisions of subdivision (b) are applicable, except that, if **both** of the spouses effectively waive in writing the right to claim, during the period the case commenced by filing the petition is pending, the exemptions provided by the applicable exemption provisions of this chapter, other than subdivision (b), in any case commenced by filing a petition for either of them under Title 11 of the United States Code, then they may elect to instead utilize the applicable exemptions set forth in subdivision (b).

(emphasis added). The court's review of the docket reveals that the spousal waiver has not been filed. The Trustee's Objection is sustained, and the claimed exemptions are disallowed.

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

IT IS ORDERED that Objection is sustained, and the Debtor’s claimed exemptions are disallowed in their entirety.

Final Ruling: No appearance at the March 10, 2020, hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 20, 2020. By the court’s calculation, 50 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Randell Dee Comstock and Maria Elvira Comstock (“Debtor”) have provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Response indicating non-opposition on February 24, 2020. Dckt. 63. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Randell Dee Comstock and Maria Elvira Comstock (“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 20, 2020, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Final Ruling: No appearance at the March 10, 2020, hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on January 27, 2020. 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 Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

The Motion to Confirm the Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, George Bleasdale and Leah Bacus Bleasdale (“Debtor”), have provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Response indicating non-opposition February 25, 2020. Dckt. 32. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

The Motion to Confirm the Chapter 13 Plan filed by the debtor, George Bleasdale and Leah Bacus Bleasdale (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Debtor's Chapter 13 Plan filed on January 27, 2020, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Final Ruling: No appearance at the March 10, 2020, hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor’s Attorney on January 27, 2020. By the court’s calculation, 43 days’ notice was provided. 42 days’ notice is required. FED. R. BANKR. P. 2002(b); LOCAL BANKR. R. 3015-1(d)(1).

The Objection To Confirmation 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 Objection is overruled as moot, and the proposed Chapter 13 Plan is not confirmed.

MEB Loan Trust IV, U.S. Bank National Association, not in its individual capacity but solely as trustee filed this Objection on January 27, 2020, opposing confirmation of the debtors, Jessy Cortez Esio and Klarissa Arevalo Esio (“Debtor”) proposed Chapter 13 plan.

The court already issued an Order denying confirmation on January 23, 2020. Dckt. 65. Therefore, the Creditor’s Objection is moot, and shall be overruled.

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

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

The Objection to Confirmation the Chapter 13 Plan filed by the Chapter

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

IT IS ORDERED that the Objection is overruled as moot, and the proposed Chapter 13 Plan is not confirmed.