UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

Pursuant to District Court General Order 612, no persons are permitted to appear in court unless authorized by order of the court. All appearances of parties and attorneys shall be telephonic through CourtCall, which advises the court that it is waiving the fee for the use of its service by *pro se* (not represented by an attorney) parties through April 30, 2020. **The contact information for CourtCall to arrange for a phone appearance is: (866) 582-6878**.

March 31, 2020 at 3:00 p.m.

1.	**20-20302-E-13** **DPC-1** **1 thru 2**	**OMAR URCUYO** **Peter Macaluso**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK** **3-4-20 [28]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and parties requesting special notice on March 4, 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 ----------.

The Objection to Confirmation of Plan is sustained.

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

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

B. The Plan does not specify a monthly plan payment amount.

C. Debtor failed to file a detailed statement showing gross receipts and ordinary and necessary expenses.

D. The attorney fees requested exceed the maximum fees allowed for a non-business case.

DISCUSSION

Trustee's objections are well-taken.

Failure to Appear at 341 Meeting

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

Feasibility

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). A review of Debtor's Plan shows that there is no monthly plan payment amount specified under Section 2 or Section 7. Without a complete proposed plan, the court cannot determine whether the Plan is confirmable.

Failure to File Business Documents Required by Schedule I

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

Attorney's Fees

Under Local Bankruptcy Rule 2016(a), compensation paid to attorneys for the representation of chapter 13 debtors is determined according to 2016-1(c), which provides for fixed fees approved in connection with plan confirmation. However, if a party in interest objects, such as the trustee, compensation is determined in accordance with 11 U.S.C. §§ 329 and 330.

Trustee objects to a "no look" fee in this case. Thus, counsel's fees will be reviewed under the standard loadstar analysis.

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.

2. **20-20302-E-13 JCW-1** **OMAR URCUYO** **Peter Macaluso** **OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK TRUST, N.A. 3-5-20 [32]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and Chapter 13 Trustee on March 5, 2020. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust by and through its servicing agent Caliber Home Loans, Inc. ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

A. Debtor fails to provide for full payment of Creditor's arrearage.

B. Debtor seeks to modify Creditor's loan by proposing partial payments as adequate protection until the Property is refinanced or sold.

C. Debtor does not have sufficient income to fund a Chapter 13 Plan and provide for Creditor's claim.

DISCUSSION

Creditor's objections are well-taken.

Failure to Cure Arrearage of Creditor

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts $408,091.87 in pre-petition arrearage. Proof of Claim 10-1. The Plan does not propose to cure those arrearage. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearage.

Modification of an Obligation Secured Only by Principal Residence

Debtor's Plan was not filed in good faith and is an improper modification of a claim secured only by a security interest in real property that is Debtor's principal residence. Debtor proposes to pay Creditor in full through a refinance or sale of the subject property on or before the 12th month of the Plan. No other details are provided.

Additionally, Debtor proposes adequate protection payments of $1,660.00. According to Creditor this is not the contract payment. Creditor alleges that the monthly amount due on the obligation is $2,579.70. Creditor failed to provide the security instrument with their objection. The Proof of Claim does not include it as an attachment.

Creditor filed a Proof of Claim indicating a secured claim in the amount of $685,358.94, secured by a first deed of trust against the property commonly known as 864 Oak Lane, Rio Linda, California. Debtor's Schedules indicate that this is Debtor's primary residence.

Plan is Not Feasible

Creditor also asserts that Debtor having net income of $1,900.00 a month, there is not sufficient income to fund a plan. For its claim, if Debtor were to attempt to cure the obligation and make the current monthly payments to creditor, the payment to Creditor alone would be $6,738.07 a month.

A review of Debtor's Plan shows that it does not have the Debtor making any monthly payments to the Trustee, though the plan term is stated to be 60 months. Plan ¶ 2.01, ¶ 2.03, and Additional Provisions; Dckt. 3. For additional provisions it is stated that Creditor is to be paid a $1,660.00 a month adequate protection payment until the property securing the claim is sold or refinanced. The Additional Provisions say that this is to be paid on or before the twelfth month of the Plan.

The court does not see any motion to employ a real estate professional to market and sell the property during the Spring and Summer sale seasons.

Because this is the Debtor's second recent bankruptcy case, with the prior one dismissed in November 2019, Debtor sought an order extending the automatic stay pursuant to 11 U.S.C. § 362(c)(3)(B). The court's analysis was that relief was not proper, and the Debtor dismissed that

motion without prejudice. The court's discussion of the motion as stated in the Civil Minutes, Dckt. 21, include the following:

> While it is clear that Debtor needs the bankruptcy to stop a foreclosure sale of his home, it is unclear what Debtor can do to prosecute this bankruptcy case. Even without paying a mortgage, property taxes, and insurance, Debtor has $950 a month in net monthly income (not including family support payments for an unidentified source).
>
> If the property has a value of approximately $355,000 as stated under penalty of perjury on Schedule A/B in this case (and not the $225,000 as the referenced appraisal and what Debtor stated under penalty of perjury in his Schedules in the prior case) and Debtor could obtain a loan modification for the current value, a $355,000 loan, amortized over 30 years at 4% interest (though it is unlikely at a 100% loan to equity ration loan would have an interest rate as low as 4%), requires a monthly principal and interest payment of $1,694, well in excess of Debtor's $950 a month. That does not include property taxes and insurance.
>
> At the hearing, Debtor's counsel explained that Debtor seeks a chance to do a loan modification.

Based on counsel's representations as stated above, Debtor is not actually pursuing a sale or refinance, but attempting to have the Creditor agree to a loan modification.

This modification violates 11 U.S.C. § 1322(b)(2), which prohibits the modification of an obligation secured only by Debtor's residence.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust by and through its servicing agent Caliber Home Loans, Inc. ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

3. **18-27506-E-13** **CHRISTA HYLEN** **MOTION TO MODIFY PLAN**
PLC-4 **Peter Cianchetta** **2-25-20 [121]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 10, 2020. By the court's calculation, 49 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is denied.

The debtor, Christa Lynne Hylen ("Debtor") seeks confirmation of the Modified Plan to make up for missed payments due to job loss and misunderstanding of the costs related to benefits at Debtor's job. Declaration, Dckt. 123. The Modified Plan provides payments of $100.00 for 60 months, and a 0% percent dividend to unsecured claims totaling $56,822.00. Modified Plan, Dckt. 124. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on March 13, 2020. Dckt. 129. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor is delinquent in plan payments.

DISCUSSION

Debtor is $922.00 delinquent in plan payments, which represents one month of the $922.00 plan payment. Before the hearing, another plan payment will be due. According to Trustee, the Plan in § 2.01 calls for payments to be received by Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Christa Lynne Hylen ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Motion to Confirm the Modified Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

4. **20-20308-E-13 DPC-1** **RICHARD DE ROSA** **Steven Shumway** **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK** **3-5-20 [24]**

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

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

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 March 5, 2020. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. Debtor is delinquent in plan payments.

B. Debtor has failed to file a Motion to Value Secured Claim upon which the Plan relies.

C. Plan will complete in 81 months as opposed to the 60 months proposed.

D. Debtor's Plan fails to provide for a creditor with a filed proof of claim.

E. Debtor failed to provide Trustee with timely business documents.

F. Debtor failed to attached business documents required by Schedule I.

DISCUSSION

Trustee's objections are well-taken.

Delinquency

Debtor is $6,850.00 delinquent in plan payments, which represents one month of the $6,850.00 plan payment. Before the hearing, another plan payment will be due. According to Trustee, the Plan in § 2.01 calls for payments to be received by Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Debtor's Reliance on Motion to Value Secured Claim

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

Plan Term is Over 60 months

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to Trustee, the Plan will complete in 81 months due to the Internal Revenue Service Proof of Claim (2-1) filed on February 11, 2020 in the amount of $351,886.48 Moreover, as Trustee points out, Debtor has failed to provide for a secured claim from Franchise Tax Board filed under Debtor's prior case, Case No. 19-25836, in the amount of $98,567.44. Debtor's plan estimates $0.00 for priority claims. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

Failure to Afford Plan Payment

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor fails to provide for Sierra Crossing Homeowners Association's claim, Proof of Claim 5-2 under Debtor's previous case (19-25836) under the proposed plan. As Trustee notes, if Creditor obtains relief from stay and forecloses on the property, Debtor is unlikely to succeed under this Plan. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Failure to File Documents Related to Business

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

A. Questionnaire,
B. Two years of tax returns,
C. Six months of profit and loss statements,
D. Six months of bank account statements, and

E. Proof of license and insurance or written statement that no such documentation exists.

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

Failure to File Business Documents Required by Schedule I

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

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is sustained, and the Plan is not confirmed. [FN. 1]

FN. 1. The court notes that this is Debtor's second recent Chapter 13 case. Case No. 19-25836, in which Debtor was represented by another counsel, was filed on September 17, 2019 and dismissed on January 16, 2020. The Debtor failed to attend the First Meeting of Creditors (including the continued meeting) and failed to file an amended plan and motion to confirm after the original plan was denied confirmation. 19-25836; Civil Minutes, Dckt. 41.

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.

5. **18-23521-E-13 SLE-3** **EDWARD PETTYPLACE** **Steele Lanphier** **MOTION TO MODIFY PLAN** **2-19-20 [53]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 19, 2020. By the court's calculation, 40 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is denied.

The debtor, Edward Franklin Pettyplace ("Debtor") seeks confirmation of the Modified Plan because he is now able to afford plan payments now that he is back to work after having to take care of his wife who was sick but has now stabilized. Declaration, Dckt. 55. The Modified Plan provides payments of $1,145.00 for 60 months commencing on February 2020, and a 100% percent dividend to unsecured claims totaling $0.00. Modified Plan, Dckt. 56. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on March 13, 2020. Dckt. 65. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor is delinquent in plan payments.

B. Debtor altered Ensminger Provisions under Section 7 without providing evidence allowing for such treatment.

Trustee filed a Status Report on March 24, 2020. Dckt. 73. Trustee continues to oppose confirmation but requests that due to the current health situation in the country and General Order 612, that the motion should be continued. Adding that Debtor's Counsel may also want the matter continued to May 10, 2020 at 2:00 p.m.

DISCUSSION

Delinquency

The Chapter 13 Trustee asserts that Debtor is $1,145.00 delinquent in plan payments under the proposed Plan, which represents one month of the $1,145.00 plan payment. The debtor was delinquent $4,385.68 under the November 8, 2018 confirmed Plan at the time this motion was filed. Before the hearing, another plan payment will be due. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Ensminger Provision

The Plan includes additional provisions that improperly attempt to alter the rights of a claim secured by an interest in Debtor's principal residence that seem contrary to 11 U.S.C. § 1322(b)(2). The "Ensminger Provision" is an adequate protection plan provision that was worked out almost ten years ago between the debtor and creditor communities. It is a "simple" provision that has a debtor make an adequate protection payment in an amount equal to what would be the monthly under a loan modification that a debtor was diligently prosecuting.

With respect to Intercap Lending's Secured claim, the proposed terms of the Additional Provisions in the Plan (Dckt. 56 at 7) include:

A. Debtor added the phrase "Pursuant to the below paragraphs" to Section 7.02.1.B.

B. Debtor omitted the following standard language under Section 7.02.2: "The monthly adequate protection payments shall be applied first to the post-petition interest accruing on this claim and then principal, or as specified as an agreed to loan modification."

C. Debtor changed Section 7.02.3.3 from "Debtor shall not commence making payments under the terms of the loan modification until it has been approved or the payments authorized by court order" to "Debtor shall continue making payments under the terms of the loan modification pending court approval."

As Trustee points out, Debtor has failed to provide any evidence that a proposed loan modification has been submitted to Creditor. In his Declaration, Debtor simply states that he is "actively pursuing" a loan modification. Declaration, ¶ 4. Additionally, Debtor's Plan refers to the mortgage lender as Intercap Lending. A Request for Special Notice was filed by Intercap Lending on June 13, 2018. Dckt. 15. The docket does not reflect a transfer of claim for this mortgage.

Further, Debtor's Supplemental Schedule J does not reflect any expenses related to the Notice of Post-Petition Mortgage Fees, Expenses, and Charges filed by Creditor Nationstar Mortgage

LLC dba Mr. Cooper on May 30, 2019. The Notice lists an expense for "Tax Advances" in the amount of $1,468. 52 incurred on March 21, 2019.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Edward Franklin Pettyplace ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Motion to Confirm the Modified Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

6.	**19-24838-E-13** **PGM-1**	**TERESA/STEVEN GONSALVES** **Peter Macaluso**	**CONTINUED MOTION TO CONFIRM PLAN** **1-2-20 [44]**

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

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

Below is the court's tentative ruling.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 2, 2020. By the court's calculation, 40 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The hearing on the Motion to Confirm the Amended Plan is continued to 3:00 p.m. on May 12, 2020.

TRUSTEE'S STATUS REPORT - Request for Continuance

Trustee filed a Status Report on March 24, 2020. Dckt. 89. Trustee still opposes the relief requested. Though Debtor has provide tax returns, other matters remain. Trustee recommends the court continue the matter to May 12, 2020 at 3:00 p.m.

The Trustee's request is reasonable, especially in light of the disruption in the operation of the offices of attorneys and the Trustee relating to the travel restrictions related to the coronavirus pandemic.

REVIEW OF MOTION

The debtor, Teresa Marie Gonsalves and Steven Michael Gonsalves ("Debtor"), seek confirmation of the Amended Plan. The Amended Plan provides for monthly Plan payments of $1,875.00 commencing on January 25, 2020 for 55 months, and a 0.0% dividend for unsecured claims totaling $160,459.25. Amended Plan, Dckt. 48. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on January 28, 2020. Dckt. 48. Trustee opposes confirmation of the Plan on the basis that:

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

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

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

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

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

DEBTOR'S REPLY

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

DISCUSSION

Trustee's concerns are well taken.

Failure to Complete Plan Within Allotted Time

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

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

Failure to Provide 521 Documents

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

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

Failure to Afford Plan Payment

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

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

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

Debtor addresses these concerns by stating that:

1. Debtor will increase plan payment by $157.00.

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

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

"No Look" Fee

Under Local Bankruptcy Rule 2016(a), compensation paid to attorneys for the representation of chapter 13 debtors is determined according to 2016-1(c), which provides for fixed fees approved in connection with plan confirmation. However, if a party in interest objects, such as the trustee, compensation is determined in accordance with 11 U.S.C. §§ 329 and 330.

Trustee objects to a "no look" fee in this case. Thus, counsel's fees will be reviewed under the standard loadstar analysis.

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

Lastly, Debtor requests the objection should be continued so as to give Trustee time to review the amended Schedules, Statement of Affairs, and tax returns for 2015 and 2018.

By separate Motion Debtor has addressed this issue, with the Trustee now filing a statement of non-opposition to the no-look fee. Dckt. 87.

7. **19-26878-E-13** **LOUIS JAVAR** **MOTION TO CONFIRM PLAN**
SDH-2 **Scott Hughes** **2-19-20 [40]**

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

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 February 19, 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 denied.

The debtor, Louis Agalos Javar ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for monthly payments of $3,450.00 for 60 months, and an 84% dividend to unsecured claims totaling $60,000.00. Amended Plan, Dckt. 44. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S AMENDED OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Amended Opposition on March 13, 2020. Dckt. 48. Trustee opposes confirmation of the Plan on the basis that:

A. The proposed Plan fails to account for the Internal Revenue Service claim.

B. Debtor has not filed all applicable tax returns.

C. Debtor's Amended Plan and Motion to Confirm conflict as to the percent to be paid to unsecured creditors.

DISCUSSION

Failure to Afford Plan Payment

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). A secured expense is missing from Debtor's Petition Schedules. The IRS filed a proof of Claim on March 4, 2020 and shows Debtor owes a secured amount of $17,204.15, which the Plan does not address. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Failure to File Tax Returns

Per the Internal Revenue Service filed Proof of Claim, Claim #13-1, Debtor has failed to file the tax returns for 2017. Filing of the return is required. 11 U.S.C. §§ 1308, 1325(a)(9). Failure to file a tax return is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Conflict Between Plan and Motion

The Motion indicates unsecured claims will receive a 100% dividend. Dckt. 40. The Second Amended Plan indicates unsecured claims will receive an 84% dividend. Where the Plan and the Motion conflict as to the percent to be paid to unsecured claims, the Plan may not comply with applicable law. 11 U.S.C. § 1325(a)(1).

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

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

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

8. **19-25587-E-13 MJD-2** | **WILLIE NORMAN** **Matthew DeCaminada** | **MOTION TO CONFIRM PLAN** **2-14-20 [43]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 14, 2020. By the court's calculation, 45 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, Willie Jean Norman ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for monthly payments of $400.00 commencing February 25, 2020 for the remainder of the plan, with a 0% dividend to be paid to unsecured claims totaling $15,864.17. Amended Plan, Dckt. 45. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S AMENDED OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Amended Opposition on March 17, 2020. Dckt. 52. (The Amended Opposition corrects the hearing date for the Motion to Confirm Plan.) Trustee opposes confirmation of the Plan on the basis that:

A. The Amended Plan is not proposed in good faith

B. Debtor is delinquent in Plan payments.

DISCUSSION

Good Faith Requirement

The court shall confirm a plan if the plan has been proposed in good faith. 11 U.S.C. 1325(a)(3). Debtor's Motion to Confirm First Amended Plan was heard and denied on February 11, 2020. Debtor filed a Motion to Confirm Second Amended Plan on February 14, 2020, to be heard March 31, 2020. An amended plan is not proposed in good faith if Debtor does not attempt to fairly present the plan.

In the Opposition, the Trustee states that the issues that existed in connection with the prior plan have addressed, and there only remains the delinquency in plan payments.

However, this delinquency of $1,600.00, if it can be cured, raises an issue of good faith because it would be financially impossible for Debtor to cure such amount from her projected disposable income.

Delinquency

The Chapter 13 Trustee asserts that Debtor is $1,600.00 delinquent in plan payments, which represents multiple months of the $400.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Willie Jean Norman ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Confirm the Amended Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

9. **19-27487-E-13 MAC-1** **RICHARD/STEPHANIE ACOSTA** **MOTION TO CONFIRM PLAN**
Marc Carpenter **2-3-20 [26]**

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

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

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on creditors and parties requesting special notice on February 3, 2020. By the court's calculation, 56 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).

However, as addressed below, which notice was given, it was not given on all the required parties in interest.

The Motion to Confirm the Amended Plan is denied.

The debtors, Richard A Acosta and Marie Acosta ("Debtors"), seek confirmation of the Amended Plan. The Amended Plan provides for: one payment of $1,502.58 for the first month of the Plan, followed by 58 monthly payments of $872.00 commencing March 25, 2020, and a 10% dividend to unsecured claims totaling $58,020.00. Amended Plan, Dckt. 29. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

INSUFFICIENT NOTICE OF MOTION

A review of the label matrix attached to the Certificate Service only lists 14 parties having been served. The Chapter 13 Trustee is not listed as having been served. There are close to 30 Creditors listed on the Master Mailing List filed by Debtor. Dckt. 30.

The Franchise Tax Board has filed Proof of Claim 18-1 for $7,122.37 (of which $5,933.37 is

stated to be a priority unsecured claim), but service upon it is not documented on the Certificate of Service.

Additionally, AIS Portfolio Services, a party requesting special notice, was not served. Therefore, the Motion is denied without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Plan filed by Richard A Acosta and Marie Acosta ("Debtors"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied without prejudice.

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

CHAPTER 13 TRUSTEE'S RESPONSE

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response on March 17, 2020. Dckt. 37. Trustee requests the court confirm the Plan and that the court's order reflect that plan payments are to be $1,502.58 for month 1, $0 for month 2, and $872 for months 3 through 60.

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

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

> ~~Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.~~
>
> ~~The Motion to Confirm the Amended Chapter 13 Plan filed by the debtors, Richard A Acosta and Stephanie Marie Acosta ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~
>
> ~~**IT IS ORDERED** that the Motion to Confirm the Amended Plan is granted, and the proposed Chapter 13 Plan is confirmed.~~
>
> ~~**IT IS FURTHER ORDERED** that Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

10. 19-24883-E-13 SPB-4 | **DAVID EVANS** Stanley Berman | **MOTION TO VALUE COLLATERAL OF SAFE CREDIT UNION** 2-26-20 [66]

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

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

Below is the court's tentative ruling.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on February 26, 2020. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

The Certificate of Service states that only the Notice of Motion and Motion to Value the secured claim of SAFE Credit Union were served. Dckt. 74 at p. 1:22-26. In addition to the Motion and Notice, the pleadings relied on by the Debtor for the relief sought include the Declaration of the Debtor, Dckt. 68, and one exhibit, a "Typical Listing Breakdown" page from Kelly Blue Book, Dckt. 69.

Counsel at the hearing, **xxxxx**

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

The Motion to Value Collateral and Secured Claim of SAFE Credit Union ("Creditor") is denied without prejudice.

The Motion filed by David Garfield Evans ("Debtor") to value the secured claim of SAFE Credit Union ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 68. Debtor is the owner of a 2013 Nissan Frontier ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $10,500.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

TRUSTEE'S RESPONSE

Trustee does not oppose the Motion and notes that Debtor provides for Creditor on Schedule D and in Class 2B of the proposed First Amended Plan. Further noting that Creditor filed Proof of Claim 3-1 for $16,455.85, which indicates the value of the property is $14,929.00.

DISCUSSION

As owner of the vehicle, Debtor's opinion of value is evidence of the value's asset. However, Debtor's testimony consists of stating that consistent with Exhibit 1, Debtor's opinion of value is $10,500.00 Dckt. 68. Debtor then states that this is based on Debtor's knowledge of the condition and value of the vehicle. Unfortunately, Debtor offers no personal knowledge testimony as to the condition of the Vehicle.

Exhibit 1 provided by Debtor is what purports to be a page from Kelly Blue Book. It is titled Typical Listing Breakdown. The court did not recognize this "Typical Listing Breakdown" heading. Going to the Kelley Blue Book website, this is identified as being what was formerly identified as the Suggested Retail Price. [FN. 1]

FN. 1 https://www.kbb.com/company/faq/used-cars/#q3

No one has authenticated Exhibit 1. While Debtor makes reference to it in his Declaration, he does not authenticate it as required in Federal Rule of Evidence 901 et seq.

A business card appears to be stapled to Exhibit 1, that for Dave Callaway, identified as a "Sales Manager" for Pioneer Motors. Mr. Callaway does not, or will not, provide a declaration as a witness in this Contested Matter.

Someone has handwritten on the KBB page "Approx. $2,500 in body damage at time of Appraisal." There is no appraisal. There is no description of the damage.

Moreover, Debtor seems to be presenting the appraisal done with this report as his own opinion. A copy of the Kelly Blue Book presented includes handwritten notes and the appraiser's business card seems to have been stapled to the left side of the document.

Debtor and Counsel's attempt to "slip in" an unauthenticated exhibit. Debtor and Counsel attempt to not have an expert provide testimony, but merely have some out of court writings and a business card to be "an appraisal."

The court denies the Motion without prejudice. The gross defects in the evidence mitigates against merely continuing it. Compliance with the Rules of Evidence is not something done only when one "gets caught by the 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 Value Collateral and Secured Claim filed by David Garfield Evans ("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 without prejudice.

11. 19-24883-E-13 SPB-3 DAVID EVANS Stanley Berman MOTION TO VALUE COLLATERAL OF U.S. BANK 2-26-20 [62]

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

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 February 26, 2020. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

The Motion to Value Collateral and Secured Claim has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Value Collateral and Secured Claim of U.S. Bank, N.A. ("Creditor") is denied without prejudice.

The Motion to Value filed by David Garfield Evans ("Debtor") to value the secured claim of U.S. Bank ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 64. Debtor is the owner of the subject real property commonly known as 14920 Chattering Pines Road, Grass Valley, California ("Property"). Debtor seeks to value the Property at a fair market value of $460,000.00 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 offers a Uniform Residential Appraisal Report that the value of the Property at $460,000.00. Exhibit 1, Dckt. 65. The report is based on Appraiser's visual inspection of the property and information from parties involved in the assignment. *Id.* at 2. This Appraisal Report states it was conducted on April 19, 2019. *Id.* at 4. The Appraisal Report is signed by Anthony J. Garcia II, of Quality Appraisals. *Id.* at 7.

Unfortunately, the purported appraiser has failed, or refuses, to provide testimony in this Contested Matter. No declaration is provided for Mr. Garcia.

In Debtor's declaration, Debtor testifies that he further reduces the value of $460,000.00 stated in the report to $423,200, in order to account for the 8% of the associated costs of sale. While the Debtor states that Exhibit 1 is an appraisal, he can offer no expert witness testimony of such.

Debtor seeks to value a purported "second mortgage" of U.S. Bank which secures a claim in the amount of $185,383.68 that encumbers the Property. Debtor requests that the "second mortgage" be determined an unsecured claim and be paid in Class 7, general unsecured claims, of the Plan.

TRUSTEE'S RESPONSE

The Chapter 13 Trustee, David Cusick ("Trustee") filed a Response on March 12, 2020. Dckt. 80. Trustee does not oppose the Motion and notes that Debtor provides for Creditor on Schedule D and in Class 2C of the proposed Plan.

CREDITOR'S OPPOSITION

Creditor filed an Opposition on March 17, 2020. Dckt. 88. Creditor asserts that it does not have a "second mortgage." Creditor explains that the $185,363.68 referred to by Debtor as a second mortgage is actually a deferred principal amount, that Creditor identifies as "shown as a second mortgage" for purposes of internal identification purposes of the organization's servicing system so that the amount identified as "deferred" does not accrue interest. Opposition, ¶ 17.

Debtor fails to provide any evidence of the purported second mortgage. No Note or Deed of Trust is presented by Debtor showing its existence.

A review of Creditor's one Proof of Claim filed in this case is for $650,145.05. Proof of Claim No. 1-1. On the Mortgage Proof of Claim Attachment to Proof of Claim No. 1-1, the claim is stated as:

> Total Debt Calculation
>
> Principal +
> Deferred Balance.....($599,174.06)
>
> Interest Due.....($ 35,947.06)
>
> Fees, Costs Due.....($ 2,076.88)
>
> Escrow Deficiency.....($ 12,947.05)
>
> Total Claim.....($650,145.05)

Creditor provides the Declaration of James Stefani in opposition to the Motion. Dckt. 89. He testifies that in 2010 Debtor entered into a loan modification agreement, for which there will be a deferred payment of $186,637.98 of the principal. Declaration ¶ 7d., *Id.* Exhibit 2 is the Loan Modification Agreement. Dckt. 90. The properly authenticated Modification Agreement presented by Creditor, states in part "Repayment of a portion of Principal totaling U.S. $186,637.98, will be deferred, will not incur interest and will be paid as indicated in Section 3(F) below." Exhibit 2, at 7.

DISCUSSION

The valuation of property that secures a claim is the first step, not the end result of this Motion brought pursuant to 11 U.S.C. § 506(a). The ultimate relief is the valuation of a specific creditor's secured claim.

11 U.S.C. § 506(a) instructs the court and parties in the methodology for determining the value of a secured claim.

> (a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property**, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

As Creditor asserts, Debtor's effort seems an attempt to bifurcate and thus modifying an obligation secured only by Debtor's principal residence. This violates 11 U.S.C. § 1322(b)(2), which prohibits the modification of an obligation secured only by Debtor's residence.

In re-reading the Motion and Declaration, it appears to be carefully drafted to misstate that there are two separate obligations, not merely payment terms for one obligation. Then, the court notes that neither Debtor nor Debtor's counsel ever identify a second deed of trust or mortgage, never make reference to a second note or other evidence of obligation.

The Motion is denied, Debtor and Debtor's counsel attempting to obtain relief that is expressly prohibited by the Bankruptcy Code.

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 David Garfield Evans ("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 denied.

12. **19-24883-E-13** **DAVID EVANS** **MOTION TO CONFIRM PLAN**
SPB-5 **Stanley Berman** **2-26-20 [70]**

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

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

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 26, 2020. By the court's calculation, 33 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended Plan has not 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, David Garfield Evans ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for 60 monthly payments of $4,638.00 and a 0% dividend for unsecured claims totaling $241873. Amended Plan, Dckt. 60. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

INSUFFICIENT NOTICE OF MOTION

Applicant provided 33 days' notice of this Motion. Federal Rule of Bankruptcy Procedure 2002(a)(6) requires a minimum of twenty-one days' notice of the hearing, and Local Bankruptcy Rule 9014-1(f)(1)(B) requires an additional fourteen days for parties to file written opposition. Those time periods do not run concurrently. Those two minimums total thirty-five days. Applicant has provided two (2) fewer days than the minimum.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on March 17, 2020. Dckt. 85. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor provided insufficient notice of hearing.

B. Debtor is delinquent in plan payments.

C. Plan relies on valuing collateral.

D. Previous issues have not been resolved that show the Plan is not Debtor's best effort.

CREDITOR'S OPPOSITION

U.S. Bank, N.A. as Legal Trustee for Truman 2016 SC6 Title Trust ("Creditor") holding a secured claim filed an Opposition on March 17, 2020. Dckt. 92. Creditor opposes confirmation of the Plan on the basis that:

A. Debtor's Plan provides for an unauthorized cramdown of Creditor's secured claim.

B. The Plan attempts to bifurcate the claim secured solely by Debtor's principal residence and thus, it is a modification in violation of the bankruptcy code.

DISCUSSION

Delinquency

The Chapter 13 Trustee asserts that Debtor is $1,351.80 delinquent in plan payments, which represents a portion of the $4,560.00 plan payment. Before the hearing, another plan payment will be due. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Debtor's Reliance on Motion to Value Secured Claim

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of Safe Credit Union. Both Motions to Value Secured Claims (Safe Credit Union and U.S. Bank) have been set for hearing on March 31, 2020.

The court has denied the Motion to Value the secured claim of Safe Credit Union without prejudice, due to a failure of Debtor to provide sufficient evidence in support of the Motion.

The court has also denied the Motion to Value the secured claim of U.S. Bank as being in violation of the Bankruptcy Code, the Debtor attempting to value a secured claim for which the only collateral is Debtor's principal residence.

Plan is not Debtor's Best Effort

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

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

Trustee contends that at the Meeting of Creditors Debtor admitted that the expenses listed on Schedule J were incorrect. Debtor lists $0.00 for utilities related to real property known as 14920 Chattering Pines, Road, Grass Valley, CA.

Trustee further contends that at the Meeting of Creditors, Debtor admitted that he has two (2) unsecured personal loans with Sierra Credit Union in the approximate amounts of $5,500.00 and $25,000.00. These debts are not provided for in the Plan or listed in the appropriate schedule. Without an accurate picture of Debtor's financial liabilities, the court cannot confirm a plan.

Modification of an Obligation Secured Only by Principal Residence

Creditor argues that Debtor's Plan was not filed in good faith and is an improper modification of a claim secured only by a security interest in real property that is Debtor's principal residence. Creditor has filed a Proof of Claim indicating a secured claim in the amount of $650,145.05, secured by a deed of trust against the property commonly known as 1492 Chattering Pines Road, Grass Valley, California. Debtor's Schedules indicate that this is Debtor's primary residence. This modification violates 11 U.S.C. § 1322(b)(2), which prohibits the modification of an obligation secured only by Debtor's residence.

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

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

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

13. 20-20351-E-13 DPC-1 — EFREN/ELENA OLIVAN, Steele Lanphier — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK, 3-5-20 [16]

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the 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 March 5, 2020. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is overruled and the Chapter 13 Plan is confirmed.

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

A. Debtor's projected disposable income is not being applied to make payments to unsecured creditors.

B. The Plan is not Debtor's best effort.

DISCUSSION

Trustee's objections are well-taken. Trustee alleges that the Plan violates 11 U.S.C. § 1325(b)(1), which provides:

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

Debtor's proposed monthly Plan payment is $497.00. Debtor's Calculation of Disposable Income form states that Debtor has a monthly disposable income of $540.21. Dckt. 1, at 69. According to Trustee, Debtor must pay no less than $32,412.60 to unsecured non-priority creditors. The plan provides for $0.00 to unsecured non-priority creditors.

Moreover, Trustee objects to three expenses listed on Debtor's Schedule I: $140.00 for son's sports; $300.00 for daughter's college expenses, and $300.00 for sons anticipated college expenses. *Id.*, at 49.

While stating the conclusion that these are not reasonable and necessary expenses, the Trustee offers no legal explanation for such. For testimony, all that an employee of the Trustee provides is that these expenses are listed on Schedule J. Declaration, ¶ 5; Dckt. 18.

The Trustee offers no analysis of Schedule J expenses and why very modest expenses for family members are not reasonable. Rather, the Trustee has chosen to just dictate to the court that the expenses are unreasonable and, based on no more than the Trustee's direction, the court is to enter an order denying confirmation. Such misstates the roles of the court and a trustee.

The court notes that in the Declaration filed with the Objection Ms. Lloyd, an employee of the Trustee, testifies under penalty of perjury that the Debtor was delinquent $497.00 in plan payments (one payment). Declaration ¶ 3; Dckt. 18. However, the Trustee has made the decision not to assert this as a grounds for denying confirmation. Objection, Dckt. 16. [FN. 1]

FN.1. The rejection of this objection may be but a Pyrrhic victory for the Debtors. If the Trustee is correct, the plan is in default, and the plan modified, then such would not be unanticipated by the Debtor, or Debtor's counsel. At that point, the Debtors and counsel would have to prepare a modified plan, motion to confirm modified plan, evidence to support the modified plan, notice a hearing, and conduct a hearing on the proposed modified plan. Any such proceedings because of the uncured default would be clearly anticipated work to be covered by the no-look fee and likely not be reasonable additional costs and expenses if counsel has chosen to opt out of the no-look fee.

Based on the grounds asserted, evidence, and legal authorities presented, the Objection to Confirmation is overruled.

The Plan does comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is overruled, and the Plan is confirmed.

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

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

14. **20-20353-E-13 DPC-1** **JAMES/NOREEN ROBERTSON** **Lucas Garcia** **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 3-3-20 [16]**

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the 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 March 3, 2020. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

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

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. Plan relies on Motion to Value Secured which has not been filed.

DISCUSSION

Trustee's objections are well-taken.

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

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

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

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

15. **19-27761-E-13 PLC-1** **WILLIAM ANDERSON** **Peter Cianchetta** **AMENDED MOTION TO CONFIRM PLAN** **2-20-20 [37]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 20, 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 denied.

The debtor, William Rodderick Anderson ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for:

A. Plan Payments of -

1. $1,200 for one month
2. $2,000 for five months
3. $2,400 for twelve months
4. $2,732 for forty-two months

B. For a term of sixty months

C. Payment of $3,850 to counsel for Debtor

D. Payment of two Class 2(A) secured claims

E. 0% Dividend for General Unsecured Claims

Amended Plan, Dckt. 34. 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 March 12, 2020. Dckt. 49. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor is delinquent in plan payments.

B. Debtor may not be able to make the plan payments.

C. Debtor has not provided all required pay advices.

D. Debtor's Plan fails the liquidation analysis.

E. Debtor's Attorney's fees are inconsistent between the various documents submitted.

DISCUSSION

Delinquency

The Chapter 13 Trustee asserts that Debtor is $400.00 delinquent in plan payments, which represents a portion of the $2,000.00 plan payment. Before the hearing, another plan payment will be due. According to the Chapter 13 Trustee, the Plan in § 2.01 calls for payments to be received by the Chapter 13 Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Failure to Afford Plan Payment

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Concerns raised by Trustee and this court with Debtor's previous Plan have not been addressed.

The unrealistic expenses listed on Debtor's Schedule J for a family of six, with an unemployed spouse, remain. Debtor has not filed amended schedules to more realistically address the amounts listed for clothing, entertainment, and personal care products, among others. Additionally, Trustee remain uncertain as to how many retirement loans Debtor is repaying and when they will be paid off. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Failure to Provide Pay Advices

Debtor has not provided the Chapter 13 Trustee with employer payment advices for the

sixty-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv); FED. R. BANKR. P. 4002(b)(2)(A). While Debtor has provided one pay stub, Debtor has failed to provide all necessary pay stubs. That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Debtor Fails Liquidation Analysis

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor's plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). The Chapter 13 Trustee states that Debtor's non-exempt equity totals $12,543.00. Trustee objected to Debtor's exemptions, and the court sustained his objection (Dckt. 45). Debtor proposes 0.00% dividend to unsecured creditor; but if Debtor does not modify the proposed plan, Trustee estimates that the Plan will disburse 100% dividend to unsecured creditors.

Attorney's Fees

Under Local Bankruptcy Rule 2016(a), compensation paid to attorneys for the representation of chapter 13 debtors is determined according to 2016-1(c), which provides for fixed fees approved in connection with plan confirmation. However, if a party in interest objects, such as the trustee, compensation is determined in accordance with 11 U.S.C. §§ 329 and 330.

Here, Trustee does not object but points out that there is a discrepancy between the Plan, the Statement of Rights and Responsibilities, and the Disclosure of Compensation of Attorney for Debtor. Thus, Debtor's Counsel must clarify the amounts paid and amounts agreed to be accepted in all the applicable documents.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, William Rodderick Anderson ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Confirm the Amended Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

16. 19-24768-E-13 MMP-4 LARRY BELLANI Michele Poteracke MOTION TO CONFIRM PLAN 2-25-20 [74]

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 February 25, 2020. By the court's calculation, 34 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The court shortens the notice period to the 34 days given.

The Motion to Confirm the Amended Plan has not 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, Larry James Bellani ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for monthly payments of $3,356.50, followed by $2,650.00, and after the sale of the family residence, payments of $706.00 for the remainder of the plan, with a 50% dividend to unsecured claims totaling $22,233.00. Amended Plan, Dckt. 67. 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 March 12, 2020. Dckt. 81. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor fails to provide the terms of the sale of the family residence.

B. Plan payment due before the hearing on the instant motion.

CREDITOR'S OPPOSITION

ABS Loan Trust V ("Creditor") holding a secured claim filed an Opposition on March 12, 2020. Dckt. 84. Creditor opposes confirmation of the Plan on the basis that:

A. Debtor's Plan fails to cure Creditor's pre-petition arrearage.

DISCUSSION

The court continues to be concerned that Debtor will not be able to successfully complete a plan. Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6).

The court cannot determine whether the Plan is confirmable when the sale of the residence on which Debtor's Plan relies in order to succeed has yet to occur. Debtor first mentioned the sale in February 2019. It has been over a year. Debtor further raises red flags when in the Motion, Debtor states "the property should sell within a few months." At this rate, this could result into another year of delays.

The court joins Trustee in his skepticism that the sale will occur at all. And turns to Creditor's shared concern about the sale and Debtor's failure to promptly cure Creditor's pre-petition arrearage.

Failure to Cure Arrearage of Creditor

Creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts $27,771.44 in pre-petition arrearage. The Plan does not propose to cure those arrearage. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearage.

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

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

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

17. 20-20173-E-13 GERALD JOHNSON MOTION TO CONFIRM PLAN
FF-2 Gary Fraley 2-10-20 [27]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 10, 2020. By the court's calculation, 49 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Plan is denied.

The debtor, Gerald William Johnson ("Debtor") seeks confirmation of the Chapter 13 Plan. The Plan provides for monthly plan payments of $2,105.60 for 60 months, with a 0% percent dividend for unsecured claims totaling $0.00. Plan, Dckt. 26. 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 March 16, 2020. Dckt. 32. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor has failed to file tax returns.

B. Debtor's Meeting of Creditors has not been concluded.

DISCUSSION

Debtor admitted at the Meeting of Creditors that the federal income tax return for the 4-year period preceding the filing of the Petition has not been filed. Specifically, there are returns due for the years 2016 and 2017. Filing of the return is required. 11 U.S.C. §§ 1308, 1325(a)(9). Failure to file a tax return is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Moreover, Trustee points out that Debtor's Motion to Confirm stated that the Meeting of Creditor was concluded. However, the Meeting was continued to April 9, 2020, to allow Debtor the time to file the missing tax returns referred to above.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the debtor, Gerald William Johnson ("Debtor"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Confirm the Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

18. **16-23476-E-13 GEL-1** **FELIPA DE JIMENEZ** **Gabriel Liberman** **MOTION TO APPROVE STIPULATION REGARDING REMAINING BALANCE OF ATTORNEY FEES** **3-4-20 [47]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 4, 2020. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

The Motion to Approve Stipulation Regarding Remaining Balance of Attorney Fees 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 Approve Stipulation Regarding Remaining Balance of Attorney Fees is granted.

Chapter 13 Debtor, Felipa Martin De Jimenez ("Debtor") requests that the court approve a stipulation with the Chapter 13 Trustee, David P. Cusick ("Trustee") which provides that the administrative expense for attorney fees owed to Debtor's Counsel, Gabriel E. Liberman ("Counsel") has been deemed paid in full.

STIPULATION

Trustee and Debtor stipulate to an order regarding Counsel's attorney's fees, subject to approval by the court upon the following facts (the full terms of the Stipulation are set forth in the Stipulation filed in support of the Motion, Dckt. 49):

A. Debtor's Plan called for payments of $390.00 per month for 36 months.

B. Counsel substituted in January 2018.

C. According to Trustee's records, Debtor made all of her payments, and all creditors have been paid per the plan.

D. The only claim remaining to be paid in the case is Counsel's fees in an amount of $616.02.

E. Counsel wishes that the Debtor receive a discharge and complete her case with no further payment. He is willing to waive the remaining balance of $616.02 in attorney's fees.

DISCUSSION

Here, Debtor's Counsel has stipulated to the waiver with the Trustee. The Motion to Approve the Stipulation was filed and was set for hearing. A total of 27 days notice was provided with oppositions and responses to be heard at the hearing. The Motion's Certificate of Service provides for all who received notice of this Stipulation.

The Stipulation is based on Debtor's remaining creditor, Counsel for an amount of $616.02 in attorney's fees. Except for this balance, Debtor has successfully completed her plan. Counsel has agreed to waive his fees so that Debtor can receive a discharge and complete her case.

Counsel, Debtor, and Trustee have responsibly addressed these issues, allowed Counsel to participate in the solution, and have presented a Stipulation that allows Debtor to move on.

The Motion is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Stipulation filed by Tracy Hope Davis, United States Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Approval of Stipulation between Debtor and Trustee is granted, and the attorneys's fees in the amount of $616.02 are waived.

19. 20-21316-E-13 GGM-4 | **GAVIN MEHL, Pro Se** | **MOTION TO EXTEND AUTOMATIC STAY, 3-12-20 [9]**

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

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

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 and creditors, on March 12, 2020. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

The Motion requesting that the court impose the 11 U.S.C. § 362(a) 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.

Gavin Gregory Mehl ("Debtor") seeks to have the stay arising under 11 U.S.C. § 362(a) to be imposed in this case.

This is Debtor's third bankruptcy case pending in the past year, with the prior two cases having been dismissed. Debtor's two prior bankruptcy cases (Nos. 19-26296 and 20-20713) that were pending and dismissed within the one-year period preceding the commencement of this bankruptcy case on March 5, 2020, are:

Chapter 13 Case 20-20713.....Dismissed February 25, 2020.

Chapter 13 Case 19-26296.....Dismissed November 5, 2019

See Order, Bankr. E.D. Cal. No. 19-26296, Dckt. 39, November 5, 2019; Order, Bankr. E.D. Cal. No. 20-20713, Dckt. 23, February 25, 2020.

Therefore, pursuant to 11 U.S.C. § 362(c)(4)(A)(I), the provisions of the automatic stay did

not go into effect upon Debtor filing the current case in which he has now filed this Motion.

Debtor does not identify the prior filed and dismissed case in the Motion. In reviewing Debtor's request, the court discovered that there were indeed two prior bankruptcy cases filed within the last year. Thus, Debtor also relied on an incorrect legal standard by requesting relief pursuant to 11 U.S.C. § 362(c)(3)(B).

Congress provides in 11 U.S.C. § 362(c)(4)(B) for the court to "impose" the stay in which one did not go into effect due to § 362(c)(4)(A)(i). Debtor, in *pro se*, commenced this case on March 5, 2020, and filed the current Motion on March 12, 2020. The court construes this as a Motion to Impose the Stay, notwithstanding Debtor's misidentification.

Review of Grounds Stated in the Motion

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because Debtor was confused as to when schedules needed to be completed and therefore failed to finish the schedules by the time allowed by the court.

The court reviews the grounds asserted below.

APPLICABLE LAW

When the 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). Thus, imposing the stay is not an all or nothing prospect, but can be tailored to one, several, or all "creditors."

This is only after notice and a hearing, only if the party in interest seeking to have the stay imposed 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).

In seeking relief pursuant to subparagraph (B), a case is presumptively filed not in good faith and may be rebutted by clear and convincing evidence if:

(i) **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; [. . .]

(ii) **as to any creditor that commenced an action under subsection (d) in a previous case** in which the individual was a **debtor if, as of the date of dismissal of such case, such action was still pending** or had been resolved by terminating, conditioning, or limiting the stay as to such action of such creditor.

11 U.S.C. § 362(c)(4)(D) [emphasis added].

As expressly stated in 11 U.S.C. § 362(c)(4)(B) (II) and (III), "mere inadvertence or negligence shall not be substantial excuse unless the dismissal was caused by the debtor's attorney. Thus, a debtor saying that he or she in error forgot or failed to timely file the documents does not rebut the presumption of bad faith from the multiple cases that were pending and dismissed in the prior year.

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.

DISCUSSION

Both of Debtor's prior cases were dismissed after Debtor failed to timely file documents (No.19-26296, Dckt. 39, November 5, 2019; No. 20-20713, Dckt. 23, February 25, 2020).

Debtor argues that the court should focus on the following for the determination of good faith:

(1) Movant has a high likelihood of success because he owns property;

(2) All filings have been timely completed with the bankruptcy clerk;

(3) Prior case was not dismissed due to bad faith but for Debtor's excusable

neglect of failing to timely file documents and failure to correct his mistakes;

(4) Although Movant's financial status has no improved, that has no impact on this analysis given the above argument;

(5) Movant believes that no creditor will suffer any prejudice by the granting of this motion;

(6) Movant's motivation in filing this case was to "maintain good with the utility companies and protect the land under United States of America forever benefits of the letters patent;" and

(7) Movant expects no objection to this Motion.

Motion at 4.

A review of the instant case's docket shows that Debtor has filed the petition, and the following accompanying documents: Summary of Assets and Liabilities; Schedules; and a proposed Plan.

Review of Prior Cases

Chapter 13 Case No. 20-20731

Chapter 13 Case No. 20-20731 was filed on February 7, 2020, and dismissed on February 25, 2020. As Debtor states, it was dismissed due to the failure to timely file documents. 20-20731; Order, Dckt. 23. The Debtor did get some documents filed in that case, including a motion to extend the automatic stay. That motion was denied as moot, the case having been dismissed.

Debtor did file Schedules I and J in case 20-20731. On Schedule I, Debtor lists his self-employed gross income to be $2,275.00. 20-20713; Dckt. 17 at 19-20. On Schedule J Debtor lists his expenses, for a household of one person, to be ($1,300.00) a month. *Id.* at 21-23. Some conspicuously missing or understated expenses, even for a family of one, include:

A.	Income and Self-Employment Taxes.	Nothing is listed for Debtor's taxes.
B.	Property Taxes and Insurance.	Though asserting ownership of real property, nothing is provided for these expenses.
C.	Water, Sewer, Garbage.	Nothing is provided for these expenses.
D.	Food and Housekeeping Supplies.	($200) is stated as this expense. Allowing ($35) for housekeeping supplies, that leaves ($165) for food for the Debtor. Over a 30 day month, that is ($1.83) per meal for Debtor.

E.	Clothing, Laundry.	Nothing is provided for these expenses.
F.	Health Insurance.	Nothing is provided for this expense.

Chapter 13 Case No. 19-26296

Chapter 13 Case No. 19-26296 was filed on October 7, 2019, and dismissed on November 5, 2019. As stated by Debtor, Case 19-26296 was dismissed for failure to file documents. 19-26296; Order, Dckt. 39.

Debtor filed an *ex parte* Motion to Vacate the Dismissal. The court denied the *ex parte* Motion, stating that it had not been properly noticed for hearing. The court also noted that the dismissal was without prejudice to Debtor commencing another case. In the renewal, the court reviewed other prior bankruptcy filings by Debtor. *Id.*, Dckt. 41.

Debtor filed several other Motions to vacate the dismissal, each of which were denied by the court.

In this case that was pending and dismissed within the one year prior to the commencement of the case now before the court, a Motion for Relief From the Stay was filed by Rakesh Vij. *Id.*, Dckt. 8. Vij does not assert that he is a creditor of Debtor, but seeks relief from the stay to continue in the prosecution of an unlawful detainer action against the Debtor in the California Superior Court for Yolo County, Case No. UD19-879 ("State Court Unlawful Detainer Action"). Vij does state in the Motion that in addition to possession, he is asserting damages of $113.33 a day while the Debtor remains in possession of the property that is the subject of the State Court Unlawful Detainer Action. The property listed in the Motion is the same as that listed by Debtor on Schedule A/B and as his residence on his Petition in this case. Dckt. 1 at 11, 2, respectively.

Chapter 7 Case No. 17-21617

Chapter 7 Case No. 17-21617 was filed on March 13, 2017, and dismissed on March 31, 2017. The Chapter 7 Case was dismissed due to Debtor failing to file documents.

Chapter 7 Case No. 16-24643

Debtor commenced Chapter 7 Case No. 16-24643 on July 15, 2016 and his discharge was entered on October 27, 2016.

Chapter 7 Case No. 16-23987

Debtor commenced Chapter 7 Case No. 16-24634 on June 20, 2016, and it was dismissed on July 1, 2016. The case was dismissed due to Debtor's failure to file documents.

Adversary Proceeding 19-02133

On October 21, 2019, Debtor filed an adversary proceeding, naming the Judicial Council of California, dba Yolo County Superior Court, the Honorable Peter M. Williams, the Honorable Stephen

Louis Mock, Rakesh Vij, and DOES 1-50 as the Defendants. The complaint stated the following claims: (1) Civil Action for Deprivation Rights; (2) Conspiracy Against Rights; (3) Deprivation of Rights Under Color Law, and (4) Automatic Stay Fixed Till Jury; and a Demand for Jury Trial. The court has dismissed that Adversary Proceeding.

Review of Schedules in Current Case

On Schedule I in this case Debtor states that he is self-employed working "various jobs." Dckt. 1 at 29. The gross income listed from the various jobs is stated to be $2,750.00. *Id.* at 30.

On Schedule J in this case, Debtor states having expenses of ($1,300.00). *Id.* at 31-33. As with the Schedule J from the earlier case above, Debtor lists questionable expenses for his household of one person. No expenses for clothing or laundry. Only ($200.00) for food and housekeeping supplies. Nothing for self-employment or income taxes.

On the Statement of Financial Affairs, Debtor states that in 2018 and 2019 his gross income from his business averaged $2,250 a month. *Id.* at 35.

He also states that he is involved in two legal actions. The first in the U.S. District Court for identity theft and in the Yolo County Superior Court for wrongful foreclosure. *Id.* at 36.

Review of Plan in the Current Case

Debtor has filed a Chapter 13 Plan in this case. Dckt. 7. The Plan is for a 60 month term, with monthly plan payments of $73.92. Plan ¶ 2.01, ¶ 2.03; *Id.* Plan treatment for all classes of claim are left blank, except for Class 2. Two creditors are listed in Class 2: Vivint Solar, with a $1,935 claim and Pacific Gas and Electric, with no amount stated for the claim. The monthly dividends for these two creditors are stated to be $41.67 and $32.25, respectively. No interest is provided for these two stated secured claims.

On Schedule E/F Debtor lists Vivint Solar as having a disputed secured claim in the amount of ($2,500) and Pacific Gas and Electric having a disputed unsecured claim in the amount of ($1,935). Dckt. 1 at 23. No other creditors are listed on Schedule D (secured claims), E /F (priority or nonpriority unsecured claims). *Id.* at 20-26.

No other provisions are made in the plan for any claims, prosecution of litigation, or administration of assets.

DISCUSSION OF MOTION

The Certificate of Service filed by Debtor lists the following persons having been served with the Notice and Motion to extend (impose) the stay: (1) the Chapter 13 Trustee, (2) Vivint Solar, and (3) Pacific Gas and Electric. Dckt. 12. No other person has been served and these are the universe of parties that Debtor believes are the subject to the requested stay.

In the Motion to Extend (impose) the Stay, Debtor states the following need for the stay to be imposed in this case so that Debtor can pursue his rights as afforded under Chapter 13:

> [t]he debtor is in need to have the automatic stay extended to provide an opportunity to confirm a plan and maintain the land protected by United States of America forever benefits of the letters patent, which movant is successor (see Request for Judicial Notice).

Motion, p. 1:21-24; Dckt. 9. Debtor continues, stating on page two of the Motion:

> **Good Faith motivating factors for extending stay** are . . . 2) To **keep the utility companies included in debtors master address list at bay** while payment plan is approved with the trustee and 3) **protect his land secured by letters patent** commonly known as 890 Wedge Wood Court, West Sacramento, CA ~95605 ("the land").
>
> **Movant has forever benefits as a lawful assignee of the parcel of the land** specific to the original land patent issued on the first day of May 1869 by the Governor of the State of California (see Request for Judicial Notice). Accordingly, no creditors will suffer any prejudice from the granting of this stay.

Id. at 2:6-13 (emphasis added).

On its face, one would question why a Chapter 13 case and Debtor incurring all of the costs and expenses (including having to pay the Chapter 13 Trustee fees) would be warranted for two unsecured claims which aggregate less than $5,000.

The court continues on, reviewing the Request for Judicial Notice. Judicial Notice is an evidentiary rule which, in pertinent part, provides:

> (a) Scope. This rule governs judicial notice of an adjudicative fact only, not a legislative fact.
>
> (b) Kinds of Facts That May Be Judicially Noticed. The court may judicially notice a fact that is not subject to reasonable dispute because it:
>
> > (1) is generally known within the trial court's territorial jurisdiction; or
> >
> > (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.
>
> (c) Taking Notice. The court:
>
> > (1) may take judicial notice on its own; or
> >
> > (2) must take judicial notice if a party requests it and the court is supplied with the necessary information.

Fed. R. Evid. 201. *See*, Weinstein's Federal Evidence § 201.11[2] which provides a non-exhaustive list of the types of "adjudicative facts" that may be subject to judicial notice, which include the following:

•Historical exclusion of racial minorities. •Occurrence of sexual activity among minors. •Minimum driving time between two points. •Customary route between two points. •Highway's effect on environment. •Depositors receive monthly bank statements. •Traditional features of snowmen. •Vulnerability of expensive cars to vandalism. •Origin of cocaine. •Sources of cocaine sold in United States. •Prevalence of crime in particular area. •Drug dealers' use of beepers. •Public reaction to defendant's behavior. •Prison conditions. •Confidentiality practiced by law firms. •Holiday burden on mails. •Political controversies within state port authority. •Health consequences of work in car reconditioning.	•Prevailing interest rates. •Changed political conditions. •Injurious qualities of carbon monoxide. •Early-stage cancer is often not apparent to afflicted person. •Participants in recent large construction projects in community. •Adjustments to bicycle handlebars. •Intensity of religious disputes. •Ordinary business terms. •Effect of rallies and marches. •Effect of joint tenancy on value of debtor's interest in property. •Reasonableness of attorney's billing rate. •Effect of cashier's check. •Notoriety of trademark. •Existence of emergency exits as a general feature of commercial buildings. •Census data.

Review of Request for Judicial Notice

The Request for Judicial Notice is 22 pages in length. On the first page, it is requested that the court take judicial notice of the following:

> 1. NOTICE OF CERTIFICATE OF ACCEPTANCE AND DECLARATION OF LAND PATENT. CERTIFIED COPY OF LAND PATENT #143 signed by Governor of the State of California and Register of State Land Office. Dated the First day of May 1869 (See Exhibit 1).

Dckt. 11 at 1. Debtor then includes three pages of points and authorities. Debtor cites the court to a 2002 Ninth Circuit Court of Appeals case, *U.S. v. Byrne*, 291 F.3d 1056 (9th Cir. 2002), holding that boundaries to swamp and overflow lands are determined by the process of identification and patent. Debtor then cites to the *City of Monterey v. Del Monte Dunes at Monterey, Ltd*, 526 U.S. 687 (1999), Supreme Court Case stating that the plaintiff in that case was awarded $8,000,000.00 for illegal trespass and $1,450,000 for a forced sale.

Debtor cites to *Summa Corp. v. California ex Rel. Lands Comm'n*, 466 U.S. 198 (1984), addressing the Treaty of Guadalupe Hidalgo, and the state attempting to claim a public trust easement. He continues with other citations to cases asserted for the proposition that patents for real property are valid and controlling transfers of real property.

Debtor directs the court to two statutes, the first being 43 U.S.C. § 57, which provides:

> § 57. Authenticated copies or extracts from records as evidence

> Any copy of or extract from the plats, field notes, records, or other papers of the offices of the former surveyors general for the districts of Oregon and California, when authenticated by the seal and signature of the Secretary of the Interior or such officer as he may designate, shall be evidence in all cases in which the original would be evidence.
> The second statute is 43 U.S.C. § 83, which provides:
>
> § 83. Transcripts of records as evidence
>
> Transcripts of the records in the district land offices, when made and duly certified to by the Secretary of the Interior or such officers as he may designate for individuals, shall be admitted as evidence in all courts of the United States and the Territories thereof, and before all officials authorized to receive evidence, with the same force and effect as the original records.

The court takes these as Debtor stating that if the Secretary of the Interior or an officer designated by the Secretary certifies a transcripts of a district land office, then that record is admissible as evidence. Further, that copies of papers from the former surveyors general for districts of Oregon and California, if they are authenticated by the seal and signature of the Secretary of the Interior or officer by the Secretary, such papers are admissible in all cases.

Exhibit 1 to the request for Judicial Notice Consists of the following:

A. The first is a Notice of Certificate of Acceptance of Letters Patent. It is a Certificate provided by the Debtor, in which he swears that he is the assignee in the Letters Patent. He then provides a description for 139.81 stated acres. Debtor states that he "are an Assignee at Law and a bona fide successor, Assignee 'owner' by way of valuable consideration for the lands described in the Land Patent.

The Notice has a notary stamp on the last page, stating that it was signed by "Gavin Gregory Mehl" on March 12, 2020.

B. The next document is titled Grant Deed and has a Yolo County Recorder's Office stamped date of November 10 (or 18, the copy is not clear), 2005. The grantee is identified as Gavin Mehl, and JTS Communities, Inc. is identified as the grantor.

C. The next page (Dckt. 11 at 11) is a chart titled "Summary of Chain of Title." The first listed grantor is identified as "uSA-State of California #143" and the final grantor is JTS Communities, LLC.

D. Next is a one page, unsigned document stating:

> This Notice is to inform any person who has a lawful standing to view this file and who Wishes to review the complete file on record may do so by requesting an appointment With me [Gavin Mehl]. My phone no. is 917/304-6089, my address is ~916 J Street #18.

Sacramento, California ~95814. My email is mehlgavin@gmail.com.

Id. at 12. This is the Debtor stating that he has a file and people can contact him to review it.

E. The next document is identified as "Exhibit A, Personally Scanned Version of the Original Letters Patent signed on February 7, 1870." *Id.* at 13. Exhibit A is a partially illegible copy of a handwritten document.

F. Next attached is an Exhibit B, which is identified a "A true and correct certified copy of the patent from the official records of the State Lands Commission included herein." Again, the attached Exhibit B is an illegible copy of a document.

G. Next attached is an Exhibit C , which is identified as "A true and correct certified copy of the patent form the Official Records of the State of California, County of Yolo. This too is an illegible copy. On the second page of Exhibit C is a stamp of the Yolo County Clerk certifying this to be a copy of the original.

H. Next attached is an Exhibit D, which is identified as "Land Survey 'Inventory and Appraisement' - On file in the Superior Court of the County of Yolo State of California - No. 1035." The attached exhibit has a caption at the top for "In the Matter of the Estate of Caroline S. Bell, Deceased."

First, it is unclear what these various documents and claim to a land patent have to do with a Chapter 13 case to pay two creditors with unsecured claims over five years. No assertion is made that either of them have or assert any rights in the property.

Second, with respect to the various documents, the statutes cited by Debtor state that the Secretary of the Interior, or an officer he/she designates, must provide a certification. No such certifications are provided for these documents having been obtained from the records under the control of the Secretary of the Interior.

Third, it appears that Debtor is seeking for a reason not apparent from the Motion or the Plan, for the court to take judicial notice that Debtor owns property. The ownership of property is not a generally known fact in the District. Whether Debtor owns property is not a generally known fact in the District.

The court denies Debtor's request for the court to take judicial notice of the mostly illegible copies of documents by which he appears to be asserting that he owns real property. Fed. R. Evid. 901 et seq. The adjudicative fact of whether Debtor owns property is not a generally known fact in the District not subject to reasonable dispute.

Decision

While Debtor states his legal conclusions that he meets the various factors for imposing the stay, the court concludes otherwise. In going through the list of factors, the court concludes:

(1) Movant has a high likelihood of success.

Debtor asserts that he has a high likelihood of success because he "owns property." The issue of whether the Debtor owns property does not show success. Debtor's financial information shows that he cannot perform a plan for five years. His expenses do not appear to be credible or reasonable.

Undercutting this is there being no apparent reason for a Chapter 13 bankruptcy. There are two disputed claims, which Debtor intends to pay. If Debtor's finances are as he states on Schedules I and J, Debtor could have the claims quickly addressed outside of bankruptcy.

(2) All filings have been timely completed with the bankruptcy clerk;

Debtor has filed the basic documents with the court.

(3) Prior case was not dismissed due to bad faith but for Debtor's excusable neglect of failing to timely file documents and failure to correct his mistakes;

It is not clear whether the dismissals were based on excusable neglect. Debtor is very experienced in filing in this court.

(4) Debtor's financial status has not improved.

Debtor asserts this factor does not impact the decision, apparently because he asserts he owns property. That does not change that Debtor has not shown that he can make plan payments, or why in good faith, a bankruptcy case has been filed to address the two undisputed claims that total less than $5,000.

(5) Movant believes that no creditor will suffer any prejudice by the granting of this motion.

For the only two creditors Debtor has listed on his Schedules under penalty of perjury and gave notice of this Motion, whether the stay is imposed or not, it will be of little consequence. Debtor states that they have no liens and have no interests in any property of the estate. Debtor does not cite to any foreclosure or other action taken or to be taken by these creditors.

Debtor does not need a stay to deal with these unsecured claims in a bankruptcy case and Chapter 13 Plan. Debtor only needs to get the plan confirmed and lock these two creditors with disputed claims for their payments over five years.

The Debtor's First Meeting of Creditors is scheduled for April 16, 2020. The deadline for either of the two creditors with disputed claims or the Chapter 13 Trustee filing objections to confirmation expires on April 23, 2020. Notice of Chapter 13 Case, § 9; Dckt. 14. The Bankruptcy Noticing Center has served the Notice of Chapter 13 Case on the Debtor, the Chapter 13 Trustee, and Debtor's two creditors. Cert. of Notice., Dckt. 16.

The Debtor, if diligently prosecuting this case in good faith and in compliance with the Bankruptcy Code, could well have a plan confirmed by the first of May 2020.

(6) Movant states that his motivation in filing this case was to "maintain good with the utility companies and protect the land under United States of America forever benefits of the letters patent."

It is not clear how taking the two disputed claims and creating a five year repayment plan is "good," at least as far as a utility is concerned. The second part of the statement that the stay is to "protect the land under United States of America forever benefits of the letters patent" alludes to issues not presented to the court. It is not shown how or what either of the two creditors with disputed claims are doing for which it is necessary to obtain such "protection."

(7) Movant expects no objection to this Motion.

From the information provided, there is nothing that the imposition of the stay would do to the two creditors holding disputed claims such that they would object. They have no interest in any land that Debtor seeks to protect. Given the small claims, it is unlikely that either would spend any time and money to oppose a plan. If the Debtor is diligently prosecuting a plan in good faith, which could be confirmed by the first part of May 2020, there is no need for a stay.

Scope of Stay to Be Imposed

As specified in 11 U.S.C. § 362(c)(4)(B), "the court may order the stay to take effect in the case as to any or all creditors . . . ." Thus, any stay to be issued will be as to creditors, not other persons.

Creditor is a defined term under the Bankruptcy Code in 11 U.S.C. § 101(10) to mean an entity that: (A) has a claim against the debtor that arose at the time of or before the order for relief, (B) has a claim for an obligation: (i) arising after the order from relief but before conversion from Chapter 11, 12, or 13 (§ 348(d)), (ii) in an involuntary case arising in the ordinary course of business (§ 502(f)), (iii) arising from rejection of a lease or executory contract (§ 502(g)), (iv) arising from an avoided transfer or offset (§ 502(h)), or for priority tax obligation (§ 502(i)); or a community claim.

The only two creditors identified by Debtor against whom the court could impose the stay would be Vivint Solar and Pacific Gas and Electric. That is the universe of persons the Debtor believes are creditors (both identified as having disputed claims) that can be subject to a stay imposed pursuant to 11 U.S.C. § 362(c)(4)(B).

Other Possible Target of Requested Stay

It appears that the real target of a stay is not anyone identified to the court in this case. That Debtor appears to be seeking to have a stay imposed to used against a third-party who Debtor has excluded from the motion and bankruptcy case (for now). In connection with Bankruptcy Case No. 19-02160, Debtor filed an adversary proceeding that sheds some light on the possible target(s).

Debtor filed a complaint in which he named the Defendants as The Judicial Council of California, dba Yolo County Superior Court, Hon. Peter M. Williams, Hon. Stephen Louis Mock, and Rakesh Vij. Adv. 19-02133. In the Complaint, Debtor discusses his being sued by Rakesh Vij, with the proceeding being in what is identified as the "Yolo County Superior Court." The allegations include that the "Yolo County Superior Court" is not a valid court and Debtor denies that such asserted state court has jurisdiction for such an action.

It further discusses claims that the Debtor is being deprived of his rights and property by the "Yolo County Superior Court" purporting to adjudicate Rakesh Vij's right to possession of property (not identified in the Complaint). Adversary Proceeding 19-02133 was dismissed without prejudice after the Debtor's prior bankruptcy case was dismissed.

It appears that the persons to have property protected from may be Rakesh Vij and the Judicial Council of California, dba Yolo County Superior Court, and the named judges in Adversary Proceeding 19-02133. However, Debtor has not provided them with notice of this Motion or the bankruptcy case.

More significantly, it does not appear that these persons, at least with respect to Rakesh Vij seeking to obtain possession of the property, are not "creditors" against whom a stay could be imposed. Debtor might assert that with respect to the $113.00 a day in damages Rakesh Vij seeks for Debtor continuing in possession of the property in dispute has a claim. Any relief imposing a stay would only go to such dollar amounts asserted to be owed, not to Rakesh Vij asserting his interest in the property.

A review of other litigation by Debtor strengthens the inference that he is attempting to get a stay to be used against Rakesh Vij in connection with litigation by which Rakesh Vij is attempting to enforce a judgment for possession of property.

District Court Actions

Action to Adjudicate Ownership of Property. On the Statement of Financial Affairs Debtor identifies pending litigation in the District Court. That action is *Gavin Mehl v. Rakesh Vij*, E.D. Cal. No. 19-01005, which was filed on March 9, 2020. The allegations in the First Amended Complaint include that the Debtor acquired in 2005 "certain parcels of land located in Yolo County, California." Debtor asserts that a dispute exists with Rakesh Vij over ownership to that property. Debtor seeks to have it determined that he has the ownership of the property and damages from those who have interfered with his interests in the property.

First Removal. In running the Debtor's name in the District Court Pacer site, two other District Court action came up. The first is *Rakesh Vij v. Gavin Mehl [Debtor], Casey Constantine*, E.D. Cal. No. 19-cv-01003. This is a state court action, identified as *Rakesh Vij v. Gavin Mehl, Casey Constantine*, California Superior Court for Yolo County Case No. UD-19-879, that Debtor removed to the District Court, the Notice of Removal filed on May 31, 2019.

On June 3, 2019, the District Court judge issued an order remanding that action to the Yolo County Superior Court, concluding that the District Court lacked subject matter jurisdiction. 19-01003; Order, Dckt. 3.

In remanding the case back to the California Superior Court for Yolo County, the District Court stated that Debtor was seeking to removed an unlawful detainer proceeding, asserting that federal jurisdiction existed based on federal subject matter, diversity, and admiralty/maritime jurisdiction. *Id.*; Order, p. 2:16-19. The District Court concluded that none of the asserted federal jurisdictional grounds exists. *Id.*; Order, p. 3:22-28, 4:1-27.

Second Removal. On August 28, 2019, Debtor filed a second Notice of Removal for California Superior Court for Yolo County Case No. UD19-879. This is the second District Court

Action, *Rakesh Vij v. Gavin Mehl*, E.D. Cal. No. 19-cv-01686. On August 29, 2020, Debtor filed a pleading titled "Notice of Dismissal Pursuant to Federal Rules of Civil Procedure 41(a) or (c)." 19-cv-01686; Notice of Dismissal, Dckt. 3. The Notice of Dismissal states that the Plaintiff dismisses the action in its entirety. The Notice is signed by the Debtor, as the Defendant, and not the Plaintiff.

The District Court judge in this second removal of the State Court Unlawful Detainer Action remanded it back to the California Superior Court for Yolo County.

Stay Pending Litigation of Rights of the Bankruptcy Estate

It may be that Debtor, rather than seeking a preliminary injunction in the District Court Action, is seeking to use the bankruptcy stay to hold other proceedings in suspense while the District Court Action is prosecuted, specifically, State Court Unlawful Detainer Action.

As discussed above, such relief is beyond the scope of what is permitted in 11 U.S.C. § 362(c)(3)(B), which is limited to imposing stay as to acts of creditors. Here, it appears that the stay would be sought as to ownership and possession of property in the State Court Unlawful Detainer Action.

To the extent that the State Court Unlawful Detainer Action was that of a "creditor" and a stay could be imposed, Debtor has not shown how a Chapter 13 case and use of a bankruptcy stay is a good faith prosecution of a bankruptcy case to use the § 362(a) stay in the place of a preliminary injunction in other court litigation – such as the State Court Unlawful Detainer Action.

Whether in the Superior Court or the District Court, a party to litigation may obtain a preliminary injunction to maintain the status quo while the underlying dispute is resolved. This court has commonly seen the need for such an injunction arise where a debtor has a dispute as to whether a party is a creditor with a claim secured by the debtor's property or the third-party asserts a conflicting claim of ownership of property (such as a purchaser at a foreclosure sale) which the debtor claims to own.

For the District Court, Federal Rule of Civil Procedure 65 governs the issuance of injunctions in the District Court (for bankruptcy adversary proceedings, this is incorporated into Federal Rule of Bankruptcy Procedure 7065). Under Rule 65(c), the court may issue a preliminary injunction only if a security (usually a third-party bond) is given in an amount the court determines necessary. (There is a similar bond requirement in the state court.) The District Court has wide discretion in determining the amount of the bond, with the amount of the bond declining with the greater the apparent likelihood of success for the person seeking the injunction.

As this court has discussed in other unrelated cases, that a debtor may need to file bankruptcy and use the 11 U.S.C. § 362(a) stay ("§ 362(a) stay") in the place of a preliminary injunction is not necessarily improper. Often times a debtor has been driven to such financial distress that providing even a modest bond is impossible.

Merely not having the funds to provide a bond is not a *per se* good faith grounds to have a bankruptcy case to provide such "injunction" through a Chapter 13 plan. One of the cases where the court discussed this concept is *In re De la Salle*, Bankr. E.D. Cal. 10-29678, Civil Minutes for Motion to Dismiss or Convert (DCN: MBB-1), Dckt. 230 (Bankr. E.D. Cal. 2011), affirm., *De la Salle v. U.S.*

Bank, N.A. (In re De la Salle), 461 B.R. 593 (B.A.P. 9th Cir. 2011).

When a debtor wants to use a Chapter 13 case and plan, and the § 362(a) stay in lieu of an injunction in prosecution of a District Court or State Court action, the debtor needs to create a fund in lieu of a bond. Commonly the court sets the amount at what would be the regular mortgage payment (the issue commonly arising with a dispute as to whether the debt is enforceable). The monies are deposited each month into a blocked account, to be disbursed as ordered by the court after the underlying litigation is concluded. If the creditor/asserted owner has been improperly delayed, then the monies in the blocked account (effectively a self-funded security in place of a bond) can be used to make payments on the claim or compensate the owner for being deprived of the property. If the debtor prevails, those funds can then be used to fund the plan or pay other necessary expenses.

If the debtor cannot fund such blocked account, as this Debtor does not appear able to do, then the debtor can go back to the District Court or the State Court and convince that judge why the injunction should properly be issued with no bond. That is for the judge in the underlying action to determine, and not the bankruptcy judge to create an injunction that does not comply with Federal Rule of Civil Procedure 65(c) when there is a plan that does not provide for the creditor's/asserted owner's rights and interests being impaired by the § 362(a) stay.

DENIAL OF MOTION

Taken at face value, there is no reason for the court to impose the stay in this case. Debtor has stated under penalty of perjury that there are no creditors asserting any liens or other interests in the property of the bankruptcy estate. Debtor has only two creditors, those holding disputed claims. Though disputed, Debtor wants to pay them in full over five years. Debtor, in diligently prosecuting this case in good faith, could well have a plan confirmed in May 2020 and those creditors locked in to such payments. To the extent that Debtor fears either of the creditors commencing state court collection actions, in light of the suspension of proceedings in the Superior Courts for the next month or more, but the Bankruptcy Courts being able to conduct its business on the normal schedule using telephonic appearances, Debtor's prosecution of this bankruptcy case can proceed unabated.

If Debtor is actually seeking a stay not to apply to the two creditors who are listed on the Schedules and the only persons, other than the Chapter 13 Trustee, to have notice of this Motion and an opportunity to have their "day in court" before being enjoined, the issue of such secret proceeding, *ex parte* injunction is clearly improper.

If Debtor is seeking to have a stay to apply against persons who are a creditor, then such relief is not available pursuant to 11 U.S.C. § 362(c)(3)(B), such as attempting to stay the State Court Unlawful Detainer Action, at least to the extent it is being prosecuted by Rakesh Vij to obtain possession of the property.

Further, if Debtor seeks to use the § 362(a) stay as an injunction while he pursues adjudication of ownership of property with Rakesh Vij in Eastern District of California Case No. 19-01005 District Court, and he could establish that Vij is a "creditor," Debtor has not provided for such in the Chapter 13 Plan and has not provided for creating the blocked account fund in lieu of a bond. Given Debtor's financial information on Schedules I and J, it appears that he will be seeking an injunction from

the District Court judge, needing to convince the judge that little, if any, bond amount is proper in light of his likelihood of prevailing and the weakness or lack of merit in his opponent's asserted rights.

The Motion to Impose the Automatic Stay pursuant to 11 U.S.C. § 362(c)(4)(B) is denied.

FINAL RULINGS

20.	**10-28704-E-13** **AVN-2**	**GONZALO/LUZ CEBALLOS** **Anh Nguyen**	**MOTION TO AVOID LIEN OF AMERICAN EXPRESS CENTURION BANK** **2-19-20 [85]**

Final Ruling: No appearance at the March 31, 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, Creditor, parties requesting special notice, and Office of the United States Trustee on February 19, 2020. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of American Express Centurion Bank ("Creditor") against property of the debtors, Gonzalo G. Ceballos and Luz A. Ceballos ("Debtors") commonly known as 1210 Carriage Drive, Woodland, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $12,426.75. Exhibit 5, Dckt. 88. An abstract of judgment was recorded with Yolo County on February 18, 2010, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $187,500.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total $285,216.00 as

of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(1) in the amount of $1.00 on Schedule C. Dckt. 1.

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

ISSUANCE OF A CHAMBERS DRAFTED ORDER

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Gonzalo G. Ceballos and Luz A. Ceballos ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of American Express Centurion Bank, California Superior Court for Yolo County Case No. G09-2408, recorded on February 18, 2010, Document No. 2010-0004174-00 with the Yolo County Recorder, against the real property commonly known as 1210 Carriage Drive, Woodland, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

21. **17-27908-E-13 MC-1** **LYNETTE EDWARDS** **Muoi Chea** **MOTION BY MUOI CHEA TO WITHDRAW AS ATTORNEY 3-2-20 [43]**

Final Ruling: No appearance at the March 31, 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 March 2, 2020. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

The Motion to Withdraw as Attorney is granted.

Muoi Chea ("Movant"), counsel of record for Lynette Shena Edwards ("Debtor"), filed a Motion to Withdraw as Attorney as Debtor's counsel in the bankruptcy case. Movant states the following:

A. The Motion is brought pursuant to Local Bankruptcy Rule 2017-1(e) and California Rule of Professional Conduct 1.16(a) and (b)..

B. Counsel cannot effectively represent Debtor due to Debtor's refusal to communicate.

C. Debtor fired Movant.

D. Debtor has been acting as her own counsel.

Motion, Dckt. 43.

APPLICABLE LAW

District Court Rule 182(d) governs the withdrawal of counsel. LOCAL BANKR. R. 1001-1(C). The District Court Rule prohibits the withdrawal of counsel leaving a party *in propria persona* unless by motion noticed upon the client and all other parties who have appeared in the case. E.D. CAL. LOCAL R. 182(d). The attorney must provide an affidavit stating the current or last known address or addresses of the client and efforts made to notify the client of the motion to withdraw. *Id.* Leave to withdraw may be granted subject to such appropriate conditions as the Court deems fit. *Id.*

Withdrawal is only proper if the client's interest will not be unduly prejudiced or delayed. The court may consider the following factors to determine if withdrawal is appropriate: (1) the reasons why the withdrawal is sought; (2) the prejudice withdrawal may cause to other litigants; (3) the harm withdrawal might cause to the administration of justice; and (4) the degree to which withdrawal will delay the resolution of the case. *Williams v. Troehler*, No. 1:08cv01523 OWW GSA, 2010 U.S. Dist. LEXIS 69757 (E.D. Cal. June 23, 2010). FN.1.

FN.1. While the decision in *Williams v. Troehler* is a District Court case and concerns Eastern District Court Local Rule 182(d), the language in 182(d) is identical to Local Bankruptcy Rule 2017-1.

It is unethical for an attorney to abandon a client or withdraw at a critical point and thereby prejudice the client's case. *Ramirez v. Sturdevant*, 26 Cal. Rptr. 2d 554 (Cal. Ct. App. 1994). An attorney is prohibited from withdrawing until appropriate steps have been taken to avoid reasonably foreseeable prejudice to the rights of the client. *Id.* at 559.

The District Court Rules incorporate the relevant provisions of the Rules of Professional Conduct of the State Bar of California ("Rules of Professional Conduct"). E.D. CAL. LOCAL R. 180(e).

Termination of the attorney-client relationship under the Rules of Professional Conduct is governed by Rule 3-700. Counsel may not seek to withdraw from employment until Counsel takes steps reasonably foreseeable to avoid prejudice to the rights of the client. CAL. R. PROF'L CONDUCT 3-700(A)(2). The Rules of Professional Conduct establish two categories for withdrawal of Counsel: either Mandatory Withdrawal or Permissive Withdrawal.

Mandatory Withdrawal is limited to situations where Counsel (1) knows or should know that the client's behavior is taken without probable cause and for the purpose of harassing or maliciously injuring any person and (2) knows or should know that continued employment will result in violation of the Rules of Professional Conduct or the California State Bar Act. CAL. R. PROF'L CONDUCT 3-700(B).

Permissive withdrawal is limited to certain situations, including the one relevant for this Motion:

> (1) The client
>
> > (d) by other conduct renders it unreasonably difficult for the member to carry out the employment effectively.

CAL. R. PROF'L. CONDUCT 1.16(b)(4)(d).

DISCUSSION

As a ground for the Motion to Withdraw as Attorney, Movant states that Debtor refuses to listen and communicate with Movant; Debtor fired Movant; and Debtor is acting as her own counsel. Movant states in his declaration:

> Debtor is irrational and communications had broken down. [. . .] She kept on accusing me of being "prejudice" whenever she hears something that she does not want to hear, which makes no sense. [. . .] She told me that she does not like what I had to say and that she wanted another attorney, which she stated a few times throughout the phone call. [. . .]

Declaration, Dckt. 45.

Under California Rule of Professional Conduct 3-700(C)(1)(d), Debtor's conduct, such as the lack of response to correspondence from the Movant is hindering Movant's ability to carry out her employment and duties effectively. Those are sufficient reasons for permissive withdrawal.

Furthermore, on March 10, 2020, Debtor filed a Motion to Substitute Attorney. Dckt. 50. The Motion was granted on March 19, 2020. Dckt. 56. Counsel Peter G. Macaluso has substituted in as counsel to Debtor.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Withdraw as Attorney filed by Muoi Chea ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Withdraw as Attorney is granted and Movant is permitted to withdraw as counsel for Lynette Shena Edwards ("Debtor").

22. **18-23511-E-13** **SALLY BROWN** **MOTION TO MODIFY PLAN**
MMM-1 **Mohammad Mokarram** **2-18-20 [24]**

Final Ruling: No appearance at the March 31, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on February 18, 2020. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy 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, Sally Kay Brown ("Debtor"), has filed evidence in support of confirmation.

On March 13, 2020, the Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response indicating non-opposition. Dckt. 34. But Trustee points out that Debtor has increased the interest rate and monthly dividend on the Class 2 claim of the Internal Revenue Service and the claim has already been paid in full, $5,631,00 principal and $224.54 interest at the confirmed 4% interest rate. *Id.* Further, Trustee notes that under 11 U.S.C. § 1327(a), Debtor and Creditor may be bound to accept such prior treatment. *Id.*

In her Response, Debtor is not opposed to continue this Creditor's treatment according to the prior confirmed plan. Dckt. 37.

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, Sally Kay Brown ("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 18, 2020, as amended to continue the terms for payment of the Internal Revenue Service claim as provided in the prior confirmed Plan, 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.

23. **20-20212-E-13 DPC-1** | **SHANNON BUTLER** **Bert Vega** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK** **3-5-20 [17]**

Final Ruling: No appearance at the March 31, 2020 Hearing is required.

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 March 5, 2020. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

The hearing on the Objection to Confirmation of Plan is continued to 3:00 p.m on May 10, 2020.

TRUSTEE'S STATUS REPORT

On March 24, 2020, Trustee filed a Status Report expressing his continued opposition to confirmation of the Plan. Trustee asserts that Debtor is now current in payments but has not appeared at

the meeting of creditors and further recommends the court to continue the matter to May 10, 2020 at 3:00 p.m.

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

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

B. Debtor failed to file Motion to Value Secured Claim.

C. The proposed Plan fails to specify attorney's fees.

D. Debtor's Petition and Plan failed to follow local rules for signatures.

DISCUSSION

Trustee's objections are well-taken.

Failure to Appear at 341 Meeting

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

The Continued Meeting of Creditors was held on March 17, 2020, and Trustee's Report indicates Debtor did not appear. The court therefore determines that Debtor's lack of appearance has not resolved this Objection.

Debtor's Reliance on Motion to Value Secured Claim

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

Attorney's Fees

Under Local Bankruptcy Rule 2016(a), compensation paid to attorneys for the representation of chapter 13 debtors is determined according to 2016-1(c), which provides for fixed fees approved in connection with plan confirmation. However, if a party in interest objects, such as the trustee, compensation is determined in accordance with 11 U.S.C. §§ 329 and 330.

Trustee objects to the fees on the basis that the proposed Plan fails to specify as to whether counsel will be seeking the standard fees under Local Bankruptcy Rule 2016-1(c) or by motion in accordance with 11 U.S.C. §§ 329 and 330. Thus, counsel's fees will be reviewed under the standard loadstar analysis.

Improper Signature

Under Local Rule 9004-1(c), the name of the person signing the document shall be typed underneath the signature. A look at Debtor's Petition shows that Debtor failed to type their name under the /s/ signature line. Additionally, the Plan filed on January 29, 2020 contains neither Debtor's original wet signature nor electronic signature. Thus, the Plan does not comply with Local Rule 9004-1(c).

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearing on the Objection to Confirmation of the Plan is continued to 3:00 p.m. on May 10, 2020.
>
> This continuance is necessary due to the U.S. Trustee having continued various First Meetings of Creditors due to restricted courthouse access.
>
> The continuance will afford Debtor and Debtor's counsel the opportunity to diligently address the other deficiencies identified by the Trustee.

24. **19-25021-E-13 MMP-3** **STEPHEN/KAREN GINGOLD** **Michele Poteracke** **MOTION TO CONFIRM PLAN** **2-25-20 [56]**

Final Ruling: No appearance at the March 31, 2020 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 25, 2020. By the court's calculation, 34 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The court is continuing the hearing to allow the Parties to address final amendments and work to get a plan that can be completed in this case.

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

The hearing on the Motion to Confirm the Amended Plan is continued to 3:00 p.m. on May 12, 2020.

The debtors, Stephen Anthony Gingold and Karen Michelle Gingold ("Debtors"), seeks confirmation of the Amended Plan. The Amended Plan provides for payments of $3,364.95 for six (6) months, followed by $3,425.00 for the balance of the plan, with a 0% percent dividend to unsecured claims totaling $66,410.00. Amended Plan, Dckt. 52. 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 March 17, 2020. Dckt. 64. Trustee opposes confirmation of the Plan on the basis that:

A. The proposed Plan does not pay in full the priority claim of Internal Revenue Service.

B. The proposed Plan fails to properly account for mortgage arrearage.

C. Debtors are serial filers.

Trustee filed a Status Report on March 24, 2020. Dckt. 69. Trustee continues to oppose confirmation and suggest the court continue the matter to May 12, 2020 at 3:00 p.m.

CREDITOR'S OPPOSITION

Polycomb Trust Company, Custodian FBO Brian L. Kraft IRA ("Creditor") holding a secured claim filed an Opposition on March 17, 2020. Dckt. 67. Creditor opposes confirmation of the Plan on the basis that:

A. The proposed Plan fails to cure Creditor's prepetition arrearage.

DISCUSSION

Serial Filers

A review of Debtors history with this court shows a total of 16 bankruptcy cases and two (2) adversary proceedings between both debtors since 1997. Both adversary proceedings resulted in 4 year bans, one for Debtor Stephen Gingold, and the other applied as to Debtor Karen Gingold.

Debtors must explain why they think they will succeed through the instant case when prior cases have not.

Failure to Complete Plan Within Allotted Time

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Chapter 13 Trustee, the Plan will complete in 554 months (46 years) due to Debtors failure to provide for full payment of the Internal Revenue Service in the amount of $117,888.15 and mortgage arrearage in the amount of $16,181.30. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

In his Response, Debtor Stephen Gingold asserts under penalty of perjury that the IRS has provided notice and does not oppose confirmation of the plan based on the agreement that the tax lien survives the completed chapter 13 and discharge. Further, that the Plan provides for payment in full of the priority claim of the IRS and it is only the secured portion that is treated differently and in a manner that the IRS has agreed not to oppose.

Failure to Cure Arrearage of Creditor

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts $16,181.30 in pre-petition arrearage. Proof of Claim, 8-1. The Plan does not propose to cure those arrearage. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearage.

In Debtors' Response, Debtor testifies that:

> [T]he amount stated in the First Amended Plan does look like a miscalculation and so we will be asking that the amount stated in the objection be the amount paid on the arrearage, the Class 2 claim. If that can be done in the order confirming, we would appreciate that, otherwise, we will be having a Second Amended Plan prepared and noticed for hearing in May stating the payment at $388.00 per month for 53 months per the request of the objection.

Declaration, ¶ 4.

Debtor also notes that he has reviewed Trustee's Status Report and agrees with Trustee on continuing the hearing on this motion as it will provide Debtors and Counsel time to confer with Trustee and Creditor and get the amended plan "tuned" up for confirmation.

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 debtors, Stephen Anthony Gingold and Karen Michelle Gingold ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearing on the Motion to Confirm the Amended Plan is continued to 3:00 p.m. on May 12, 2020. Debtor shall file and serve a supplemental pleading on or before April 28, 2020, stating all of the final amendments to the proposed Modified Plan.

25. **19-20534-E-13** **ROBIN JORGENSEN** **MOTION TO INCUR DEBT**
SLE-2 **Steele Lanphier** **3-10-20 [59]**

Final Ruling: No appearance at the March 31, 2020 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 10, 2020. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

The Motion to Incur Debt 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.

Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion. The court waives the requirement for a hearing.

The Motion to Incur Debt is granted.

Robin Jill Jorgensen ("Debtor") seeks permission to refinance the mortgage on real property commonly known as 112 N. Alamo Drive, Vacaville, CA 95688, California, with a total loan amount of $365,000.00 and monthly payments of $2,578.39 to Loan Depot over 30 years with a 3.5% fixed interest rate.

The Motion states that the refinance will allow Debtor to complete the Chapter 13 Plan in full. Based upon conversation with Trustee, Debtor is informed that the total payoff (subject to Trustee's final audit) is approximately $74,400.00. By refinancing the Property, Debtor will be able to payoff the Bankruptcy Plan early.

TRUSTEE'S RESPONSE

The Chapter 13 Trustee, David Cusick ("Trustee") filed a Response in support of the requested refinance on March 12, 2020. Dckt. 65. Trustee asserts he would have approved this refinance *ex-parte* but Local Rule 3015-1(h)(1)(C)(vi) does not allow *ex-parte* approval if the new mortgage payment exceeds the greater of the debtor's current monthly payment on the existing debt being paid or $2,500.00.

DISCUSSION

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." FED. R. BANKR. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Incur Debt filed by Robin Jill Jorgensen ("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 Robin Jill Jorgensen is authorized to incur debt pursuant to the terms of the agreement, Exhibit B, Dckt. 63.

26. **19-25536-E-13 PGM-1** | **DEBORAH WATSON** **Peter Macaluso** | **CONTINUED MOTION TO CONFIRM PLAN** **1-14-20 [31]**

Final Ruling: No appearance at the March 31, 2020 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 14, 2020. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The hearing on the Motion to Confirm the Amended Plan is continued to 3:00 p.m. on April 28, 2020.

Request for Continuance - March 31, 2020 Hearing

Debtor filed a Supplemental Declaration on March 27, 2020, in connection with the related Motion to Value Secured Claim. Dckt. 72. She testifies that due to the travel restrictions and shelter in place orders, the appraiser she has engaged to value the property at issue cannot conduct the appraisal at this time. Debtor requests a continuance.

Though the Bankruptcy Court is able to conduct its law and motion calendars in a (relatively) normal manner, such is not for the "real world." It is reasonable to request such continuance. Continuing the hearing on the Motion to value the Secured Claim necessitates continuance of this hearing.

REVIEW OF MOTION

The debtor, Deborah Joyce Watson ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for payments of $250.00 commencing January 25, 2020 for 33 months and

a 0.0% percent dividend to unsecured claims totaling $101,646.96. Amended Plan, Dckt. 34. 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 6, 2020. Dckt. 48. Trustee opposes on the basis that:

1. The Plan relies on two pending Motions to Value Secured Claims and the Plan will not have sufficient monies to pay the claims in full if these Motions are denied.

2. Debtor has failed to provide documents in support of son paying "half of all costs."

CREDITOR'S OPPOSITION

Deutsche Bank National Trust Company ("Creditor Deutsche") holding a secured claim filed an Opposition on February 11, 2020. Dckt. 51. Creditor Deutsche opposes on the basis that:

1. The Plan does not provide for the full value of Creditor Deutsche's claim.

2. The Plan Does not promptly cure Creditor Deutsche's pre-petition arrears.

3. The Plan makes no provision for the ongoing post-petition payments.

CREDITOR'S OPPOSITION

Towd Point Mortgage Trust ("Creditor Towd") holding a secured claim filed an Opposition on February 11, 2020. Dckt. 53. Creditor Towd opposes on the basis that:

1. The Plan cannot value Creditor Towd's lien at zero and treat it as unsecured because the lien is not wholly unsecured.

DISCUSSION

Failure to Afford Plan Payment

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor has not provided the court with any extrinsic evidence of their son's payments of $950.00, $1,130.00, or $1,150.00, whichever amount is the correct amount. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

In her Response, Debtor asserts that she will provide a declaration regarding her son's income contribution prior to the hearing on this motion. On February 19, 2020, Debtor filed Declaration of Michael Bradford in support of the Plan stating that he willing and able to make monthly contributions in the sum of $1,130.00 and said contribution is a gift and does not expect to be repaid. Dckt. 67.

Failure to Cure Arrearage of Creditor Deutsche

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts $1,991.44 in pre-petition arrearage. The Plan does not propose to cure those arrearage. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearage.

Debtor contends that she is current on her mortgage payments. Response, at 2. Debtor alleges that she is not past due in the amount of $1,991.44 as payments was processed shortly after September 1, 2019, and will provide such evidence prior to the hearing. *Id*. Finally, Debtor contends that she inadvertently failed to include Creditor Deutsche as a Class 4 which is proper on the basis that Debtor is current with pre-petition mortgage payments. Id. Debtor requests the court Creditor as a Class 4 to the order confirming the Plan. *Id*.

Valuation of Creditor Towd's Secured Claim

Creditor Towd argues that Debtor improperly seeks to value Creditor's total secured claim at $0.00 despite there being equity in the Property. Creditor filed Proof of Claim 8-1 on November 11, 2019. The Proof of Claims asserts a secured claim in the amount of $50,692.17. The claim is secured by a second deed of trust over Debtor's residence. Debtor filed a Motion to Value Creditor's Secured Claim to be heard on February 25, 2020.

> The hearing on the Motion to Confirm filed by Deborah Watson, the Debtor, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearing on the Motion is continued to 3:00 p.m. on April 28, 2020, due to the inability of the appraiser to travel (in light of the coronavirus travel restrictions) as part of preparing the appraisal that is necessary for this litigation.
>
> If the parties have resolved their dispute significantly in advance of the above continued date, they may request by *ex parte* motion (lodging a proposed order with the court) to advance the hearing date.

27. **19-25536-E-13** **DEBORAH WATSON** **CONTINUED MOTION TO VALUE**
PGM-3 **Peter Macaluso** **COLLATERAL OF TOWD POINT**
MORTGAGE TRUST 2018-6
1-14-20 [41]

Final Ruling: No appearance at the March 31, 2020 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on January 14, 2020. By the court's calculation, 42 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 hearing on the Motion to Value Collateral and Secured Claim of Towd Mortgage Trust ("Creditor") is continued to 3:00 p.m. on April 28, 2020.

Request for Continuance - March 31, 2020 Hearing

Debtor filed a Supplemental Declaration on March 27, 2020. Dckt. 72. She testifies that due to the travel restrictions and shelter in place orders, the appraiser she has engaged to value the property at issue cannot conduct the appraisal at this time. Debtor requests a continuance.

Though the Bankruptcy Court is able to conduct its law and motion calendars in a (relatively) normal manner, such is not for the "real world." It is reasonable to request such continuance.

REVIEW OF MOTION

The Motion to Value filed by Deborah Joyce Watson ("Debtor") to value the secured claim of Towd Point Mortgage Trust ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 44. Debtor is the owner of the subject real property commonly known as 1800 59th Avenue, Sacramento, California ("Property"). Debtor seeks to value the Property at a fair market value of $280,000.00 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).

The valuation of property that secures a claim is the first step, not the end result of this Motion brought pursuant to 11 U.S.C. § 506(a). The ultimate relief is the valuation of a specific creditor's secured claim.

11 U.S.C. § 506(a) instructs the court and parties in the methodology for determining the value of a secured claim.

> (a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property**, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a) (emphasis added). For the court to determine that creditor's secured claim (rights and interest in collateral), that creditor must be a party who has been served and is before the court. U.S. Constitution Article III, Sec. 2 (case or controversy requirement for the parties seeking relief from a federal court).

PROOF OF CLAIM FILED

The court has reviewed the Claims Registry for this bankruptcy case. Proof of Claim No. 8-1 filed by Towd Point Mortgage Trust appears to be the claim subject of the present Motion.

OPPOSITION

Creditor has filed an Opposition on February 11, 2020. Dckt. 56. Creditor argues that Debtor cannot avoid Creditor's claim as it is not wholly unsecured. Creditor presents the Declaration of Peter Sousa, a licensed appraiser, who under penalty of perjury testified that the fair market value of the Property is $300,000.00 as of September 3, 2019. Declaration, 58. Thus, Creditor argues that its claim should be bifurcated between secured to the extend of the value ($15,164.81) and unsecured as to the rest.

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $284,835.19. Proof of Claim 9-1. Creditor's second deed of trust secures a claim with a balance of approximately $50,692.17. Proof of Claim 8-1.

Debtor's evidence of value is Debtor's opinion, stated to be $280,000. Declaration, Dckt. 44.

Creditor has provided the Declaration of Peter Sousa and his appraisal as to the value of the

Property. Dckts. 58, 57. He testifies that the value is $300,000. The Appraisal Report (Dckt. 57) provides several comparable properties, makes adjustments for specific items, and states the basis for having an opinion of $300,000 for the value of the Property.

The court determines that the value of the Property is $300,000. When taking into account the ($284,835.19) obligation secured by the senior lien, there is approximately $15,000 in value for Creditor's claim secured by the junior lien.

While technically there being "value" to block the valuation for this obligation secured by the Debtor's residence, it is not the end of the story.

Here, even with a value of $300,000, there is no economically recoverable value for Creditor. If Debtor tells Creditor to "Stick It," as in stick a memo on this account file to proceed with foreclosure, here are the adverse consequences facing Creditor:

A. No payments will be made on the senior obligation causing interest to accrue, there being no escrow for taxes, and the insurance lapsing and the senior creditor putting in place expensive forced place insurance.

B. If Creditor goes to foreclose, it will have to pay all of the senior obligations, including property taxes and insurance, and then costs of sale, estimated to be ($24,000) for a $300,000 sale.

C. Thus, for its lien that has been protected against valuation, Creditor will lose likely around ($20,000). ($300,000 sales price - ($284,835) current debt - ($5,650) additional interest - ($750) insurance - ($3,000) property taxes - ($24,000) costs of sale = ($18,235).)

If Debtor does not want to lose the house and Creditor does not want to end up with, at best, a $0.00 recovery, it would appear likely that Debtor and Creditor could agree to a very modest agreed secured claim to be paid over the plan. As an example, $3,000 paid over 60 months would require a $50 a month payment.

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 hearing on the Motion to Value Secured Claim filed by Deborah Watson, the Debtor, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearing on the Motion is continued to 3:00 p.m. on April 28, 2020, due to the inability of the appraiser to travel (in light of the coronavirus travel restrictions) as part of preparing the appraisal that is necessary for this litigation.

If the parties have resolved their dispute significantly in advance of the above continued date, they may request by *ex parte* motion (lodging a proposed order with the court) to advance the hearing date.

28. 20-21181-E-13 TJW-1 — TANYA HALL — Timothy Walsh — MOTION TO EXTEND AUTOMATIC STAY — 3-5-20 [9]

Final Ruling: No appearance at the March 31, 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 March 5, 2020. By the court's calculation, 26 days' notice was provided. 28 days' notice is required.

In light of the disruption caused by the coronavirus travel and meeting restrictions, and the substantial compliance notice period specified, the court shortens the notice period to 26 days. (Though this miscalculation is an aberration for Debtor's counsel, counsel should not rely on such shortening of time for future motions.)

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

The Motion to Extend the Automatic Stay is granted.

Tanya Dorene Hall ("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. 19-20429) was dismissed on January 21, 2020, after Debtor failed to make plan payments and failed to file an amended plan. *See* Order, Bankr. E.D. Cal. No. 19-20429, Dckt. 95, January 17, 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 due to Debtor's contesting the debt of her second deed of trust which caused delay and which Debtor plans not to contest in the current case.

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

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

A. Why was the previous plan filed?

B. What has changed so that the present plan is likely to succeed?

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

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

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Extend the Automatic Stay filed by Tanya Dorene Hall ("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.

29. 19-24838-E-13 PGM-4 | **TERESA/STEVEN GONSALVES** | **Peter Macaluso** | **MOTION FOR ALLOWANCE AND ALLOCATION OF FIXED ATTORNEY FEES TO ALL PARTIES IN INTEREST 3-3-20 [83]**

Final Ruling: No appearance at the March 31, 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, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 3, 2020. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion for Allowance and Allocation of Fixed Attorney Fees is granted.

Teresa Marie Gonsalves and Steven Michael Gonsalves ("Debtor") requests the allowance and allocation of fixed attorneys' fees between Debtor's prior counsel, Ted Greene and current counsel, Peter Macaluso.

TRUSTEE'S RESPONSE

On March 9, 2020, Trustee filed a Non-Opposition to the relief requested. Dckt. 87.

DISCUSSION

Counsel Macaluso filed the instant motion pursuant to this court's order on February 11, 2020. Dckt. 82. Present counsel substituted into the case on December 24, 2019. Present Counsel was paid $750.00 by prior counsel. Debtors have not paid any funds to present counsel prior to substituting into the case.

Present Counsel brings this motion so that he may be paid for the prosecution of this case under the "no look" fee under the local rules. Present counsel seeks to credit the pre-petition payments from prior counsel of $750.00 for the debtors, and the remaining $3,250 to be paid through the plan via the Chapter 13 Trustee.

No plan has been confirmed and thus the amount sought under the Local Rules is prior to confirmation. Present counsel also accepts the Rights and Responsibilities under the Local Rule.

The Motion is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance and Allocation of Fixed Attorney Fees to All Parties in Interest filed by Teresa Marie Gonsalves and Steven Michael Gonsalves ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and Peter Macaluso the attorney substituting in to represent the Debtor, is authorized to request in the amount of $4,000.00 as provided in Local Bankruptcy Rule 2016-1(a), with $750.00 paid to him by Debtor's former counsel, and the balance of $3,250.00 to be paid by the Chapter 13 Trustee through a confirmed Chapter 13 Plan in this case.

30. 19-24346-E-13 SLH-1 — MITCHELL SCHROEDER — Seth Hanson — OBJECTION TO CLAIM OF CATHERINE SCHROEDER CLAIM NUMBER 6 — 2-14-20 [16]

Final Ruling: No appearance at the March 31, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Chapter 13 Trustee, Government Entities, and Office of the United States Trustee on February 14, 2020. By the court's calculation, 45 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

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

The Objection to Proof of Claim Number 6 of Catherine Schroeder is sustained, and said claim is disallowed as being duplicate of Proof of Claim No. 4-1.

Mitchell James Schroeder, the Chapter 13 Debtor, ("Objector") requests that the court disallow the claim of Catherine Schroeder ("Creditor"), Proof of Claim No. 6 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $9,949.92. Objector asserts that it is duplicative and it is asserting a claim for an amount already filed by a separate creditor, the Placer County Department of Child Support Services.

DISCUSSION

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial evidence to overcome the prima facie

validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and requires financial information and factual arguments. *In re Austin,* 583 B.R. 480, 483 (B.A.P. 8th Cir. 2018). Notwithstanding the prima facie validity of a proof of claim, the ultimate burden of persuasion is always on the claimant. *In re Holm*, 931 F.2d at p. 623.

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

Creditor Catherine Schroeder's claim is based on past due domestic and child support obligations, including arrears. Proof of Claim 6-1. The amount of the claim is $9,949.92. *Id.* The Claim was filed on September 18, 2019.

The claim filed by the Placer County Department of Child Support Services is based on domestic support obligations. Proof of Claim 4-1. The amount of the claim is $9,510.12. *Id.* The Proof of Claim was filed on August 20, 2019.

Debtor correctly asserts that the claim is duplicative in that they are both for domestic support obligations he has incurred. Both Creditor Catherine Schroeder and Placer County Child Support Services are asserting the same basis for this claim. Both are asserting a very similar amount: $9,949.92 and $9,510.12 respectively. The small difference in amount may be based on the fact that Placer County filed theirs a month before Creditor Catherine Schroeder and thus more penalties accumulated.

Based on the evidence before the court, Creditor's claim is disallowed in the amount of $9,510.12. The Objection to the Proof of Claim is sustained.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Catherine Schroeder ("Creditor"), filed in this case by Mitchell James Schroeder, the Chapter 13 Debtor, ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Proof of Claim Number 6 of Creditor is sustained, and Proof of Claim Number 6 is disallowed in its entirety, as duplicative of, and without prejudice to Proof of Claim No. 4 filed by Placer County Department of Child Support Services, and the obligation thereunder by any assignee of Placer County.