

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

Notice

The court has reorganized the cases, placing all of the Final Rulings in the second part of these Posted Rulings, with the Final Rulings beginning with Item 16.

The court has also reorganized the items for which the tentative rulings are issued, Items 1–15, attempting to first address the items in which short argument is anticipated.

April 3, 2018, at 3:00 p.m.

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|----|-----------------------------------------|--------------------------------------|--------------------------------------------------------------------------------------------------------------|
| 1. | 18-20415 -E-13
APN-1 | KARINA HANGARTNER
Diana Cavanaugh | OBJECTION TO CONFIRMATION OF
PLAN BY TOYOTA MOTOR CREDIT
CORPORATION
3-13-18 [17] |
|----|-----------------------------------------|--------------------------------------|--------------------------------------------------------------------------------------------------------------|

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on March 13, 2018. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4).

Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing -----.

The Objection to Confirmation of Plan is sustained.

Toyota Motor Credit Corporation (“Creditor”) holding a secured claim opposes confirmation of the Plan on the basis that it does not provide the appropriate amount for its secured claim, chiefly that the interest rate provided is too low.

Creditor’s Objection is well-taken.

Creditor objects to the confirmation of the Plan on the basis that the Plan calls for adjusting the interest rate on its loan with Debtor to 5.00%. Creditor’s claim is secured by a 2012 Toyota Tundra. Creditor argues that this interest rate is outside the limits authorized by the Supreme Court in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). In *Till*, a plurality of the Court supported the “formula approach” for fixing post-petition interest rates. *Id.* Courts in this district have interpreted *Till* to require the use of the formula approach. See *In re Cachu*, 321 B.R. 716 (Bankr. E.D. Cal. 2005); see also *Bank of Montreal v. Official Comm. of Unsecured Creditors (In re American Homepatient, Inc.)*, 420 F.3d 559, 566 (6th Cir. 2005) (*Till* treated as a decision of the Court). Even before *Till*, the Ninth Circuit had a preference for the formula approach. See *Cachu*, 321 B.R. at 719 (citing *In re Fowler*, 903 F.2d 694 (9th Cir. 1990)).

The court agrees with the court in *Cachu* that the correct valuation of the interest rate is the prime rate in effect at the commencement of this case plus a risk adjustment. Because the creditor has only identified risk factors common to every bankruptcy case, the court fixes the interest rate as the prime rate in effect at the commencement of the case, 4.50%, plus a 1.25% risk adjustment, for a 5.75% interest rate. The objection to confirmation of the Plan on this basis is sustained. See 11 U.S.C. § 1325(a)(5)(B)(ii).

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

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

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

The Objection to the Chapter 13 Plan filed by Toyota Motor Credit Corporation (“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,

The Chapter 13 Trustee's objections are well-taken. Debtor has failed to timely provide the Chapter 13 Trustee with business documents including:

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

11 U.S.C. § 521(e)(2)(A); FED. R. BANKR. P. 4002(b)(3). Those documents are required seven days before the date set for the first meeting. 11 U.S.C. § 521(e)(2)(A)(I). Without Debtor submitting all required documents, the court and the Chapter 13 Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325.

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

The Chapter 13 Trustee alleges that the Plan is not feasible. 11 U.S.C. § 1325(a)(6). The proposed payments of \$1,725.00 are insufficient to pay the Class 1 ongoing mortgage of \$988.33, as well as a total mortgage arrears of \$3,883.83, while also paying a monthly dividend of \$1,100.00 to Toyota Financial Services, a Class 2(B) creditor. The Plan is only feasible if the dividend to Toyota Financial Services is amortized over sixty months at \$190.00 per month. Thus, the Plan may not be confirmed.

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

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

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

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 20, 2018. By the court’s calculation, 42 days’ notice was provided. 42 days’ notice is required. FED. R. BANKR. P. 2002(b); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is granted.

Thomas Shumate and Shannon Shumate (“Debtor”) seek confirmation of the Amended Plan to surrender their home. Dckt. 34. The Amended Plan calls for monthly Plan Payments in the amount of \$415.00 for sixty months, as well as providing for Carrington Mortgage to have a non-priority, Class 3 claim for the surrender of Debtor’s residence, Ditech Financial to have a non-priority, Class 3 claim for the surrender of Debtor’s residence, and World Financial Network to have a Class 3 claim for the surrender of a 2007 Dodge Charger. Dckt. 35. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE’S RESPONSE

David Cusick (“the Chapter 13 Trustee”) filed a Response on March 19, 2018. Dckt. 45. The Chapter 13 Trustee does not object to Debtor’s proposed First Amended Plan. Instead, the Chapter 13 Trustee notes that the First Amended Plan may not be Debtor’s best effort under 11 U.S.C. § 1325(b), or may not be proposed in good faith under 11 U.S.C. § 1325, because Debtor has paid ahead by \$4,323.57, and the Plan proposes a zero percent dividend to unsecured claims.

The Chapter 13 Trustee requests that the Order Confirming the Plan call for step payments. Specifically, the Chapter 13 Trustee seeks \$5,568.57 paid in through February 25, 2018, then \$415.00 per month starting March 25, 2018, for the remaining fifty-seven months of the Plan.

The Amended Plan, as amended, 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 Thomas Shumate and Shannon Shumate (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Debtor’s Amended Chapter 13 Plan filed on February 20, 2018, as amended to have \$5,568.57 paid through February 25, 2018, and then have monthly payments of \$415.00 per month beginning March 25, 2018, for the remaining fifty-seven months of the Plan, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick (“the Chapter 13 Trustee”) for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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 08, 2018. 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.

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

- A. Robert Elliott (“Debtor”) is delinquent on plan payments;
- B. Debtor cannot afford the plan payments because of a mortgage payment change; and
- C. Debtor’s Schedule I is incomplete.

The Chapter 13 Trustee’s objections are well-taken. The Chapter 13 Trustee asserts that Debtor is \$3,000.00 delinquent in plan payments, which represents one month of the \$3,000.00 plan payment. Before the hearing, another plan payment will be due. Debtor has paid \$0.00 into the plan to date. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor's plan provides for ongoing mortgage payments of \$2,225.01, but on April 1, 2018, the mortgage payments increase to \$2,836.18. Debtor will need to increase plan payments by \$679.00 to \$3,679.00. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor fails to break down his income on Schedule I. Debtor has failed to provide an attachment providing gross income and the breakdown of the source of income and any rental or business expenses. Further, Debtor stated in the Meeting of Creditors that he receives income from his brother, but the court cannot find any declaration in the docket or provided to the Chapter 13 Trustee.

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

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

5. [18-20340-E-13](#) **ROBERT ELLIOTT**
EAT-1 **Diana Cavanaugh**

**OBJECTION TO CONFIRMATION OF
PLAN BY DEUTSCHE BANK NATIONAL
TRUST COMPANY**
3-7-18 [\[23\]](#)

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, and Office of the United States Trustee on March 7, 2018. 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.

Deutsche Bank National Trust Company as Trustee pursuant to that Harbourview Mortgage Loan Pass-Through Certificates, Series 2006-13 Pooling and Servicing Agreement Dated as of November 1, 2006 (“Creditor”) holding a secured claim opposes confirmation of the Plan on the basis that Robert Elliott’s (“Debtor”) proposed Plan does not provide for completely curing its pre-petition arrearages.

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 \$27,568.28 in pre-petition arrearages. The Plan proposes to cure arrearages of \$26,812.28. The difference between the arrearages amounts presented by the parties is \$756.00. Over sixty months, that difference is \$12.60 per month. Such a monthly difference is not so drastic as to make the Plan infeasible.

Creditor also asserts that the Plan also understates the amount of the ongoing monthly mortgage payment. The Plan provides for a payment of \$2,225.01 whereas Creditor states the payment amount should be \$2,272.56.

Two days after Creditor filed this Objection, Midland Mortgage filed an Amended Notice of Mortgage Payment Change indicating that the total monthly mortgage payment would increase to \$2,503.19 on April 1, 2018. Dckt. 27. The increases come from escrow increasing from \$0.00 to \$703.44 and from principal and interest increasing from \$1,569.12 to \$1,799.75.

Over sixty months, the Plan proposes to pay \$133,500.60 in ongoing monthly mortgage payments. *See* Dckt. 12. According to the latest mortgage payment change, the amount due during the plan term will be \$150,191.40. *See* Dckt. 27. That is a difference of \$16,690.80, or \$278.18 per month.

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 adequate plan payments for the full payment of ongoing mortgage installments.

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 Deutsche Bank National Trust Company as Trustee Pursuant to that Harbourview Mortgage Loan Pass-Through Certificates, Series 2006-13 Pooling and Servicing Agreement Dated as of November 1, 2006 (“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.

6. [18-21469-E-13](#) **DONNA WELCH**
DEF-1 **David Foyil**

**MOTION TO EXTEND AUTOMATIC
STAY**
3-14-18 [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, creditors, and Office of the United States Trustee on March 14, 2018. By the court’s calculation, 20 days’ notice was provided. 14 days’ notice is required.

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

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The Motion to Extend the Automatic Stay is granted.

Donna Welch (“Debtor”) seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor’s second bankruptcy petition pending in the past year. Debtor’s prior bankruptcy case (No. 17-22153) was dismissed on January 9, 2018, after Debtor became delinquent on plan payments. *See* Order, Bankr. E.D. Cal. No. 17-22153, Dckt. 77, January 9, 2018. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because Debtor’s grandson helped contribute to the plan payments and household expenses but started to struggle with substance abuse that led the grandson to physically assault Debtor. Dckt. 11. Debtor states that she requested an Elder Abuse Restraining Order from the Amador Superior Court on January 12, 2018. Debtor states that the grandson then moved out of her home and stopped provided her with financial assistance that she needed for the Plan.

Debtor states that in the current case, her other grandson will be providing her with financial assistance until Debtor's property is sold, which she expects to provide enough funds to pay all claims. *Id.*

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on March 16, 2018. Dckt. 13. He opposes the Motion because Debtor's filing is incomplete. The Chapter 13 Trustee cannot determine if the filing is in good faith or if a plan is confirmable.

DISCUSSION

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.

Since the Chapter 13 Trustee's Response, Debtor filed a plan (calling for the sale of real property), a motion to confirm, an amended petition, and the schedules and statements.

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

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

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

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

The Motion to Extend the Automatic Stay filed by Donna Welch (“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.

7. [18-21070-E-13](#) **LARRY ROBERTSON**
GB-1 **Geva Baumer**

MOTION TO VALUE COLLATERAL OF
SANTANDER CONSUMER USA, INC.
3-2-18 [12]

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

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, parties requesting special notice, and Office of the United States Trustee on March 2, 2018. By the court’s calculation, 32 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 Santander Consumer USA Inc. dba Chrysler Capital (“Creditor”) is granted, and Creditor’s secured claim is determined to have a value of \$12,315.00.

The Motion filed by Larry Robertson (“Debtor”) to value the secured claim of Santander Consumer USA Inc. dba Chrysler Capital (“Creditor”) is accompanied by Debtor’s declaration. Debtor is the owner of a 2011 Jeep Grand Cherokee (“Vehicle”). Debtor seeks to value the Vehicle at a replacement value of \$12,315.00 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).

CHAPTER 13 TRUSTEE’S RESPONSE

David Cusick “(the Chapter 13 Trustee)” filed a Response on March 16, 2018. Dckt. 23. He states that Debtor includes Creditor on Schedule D with a claim amount of \$19,500.88 and a value of \$12,315.00, considering \$3,314.75 of repairs needed. He notes that Debtor indicates the account was opened in February 2014. The creditor is included in Class 2(B) of the proposed plan, but a claim has not been filed according to the Chapter 13 Trustee.

RULING

Creditor filed Proof of Claim No. 1-1 on March 21, 2018, for a secured claim of \$19,623.39, but Creditor has not responded to this Motion.

The lien on the Vehicle's title secures a purchase-money loan incurred on February 2, 2014, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$19,623.39. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of \$12,315.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion to Value Collateral and Secured Claim filed by Larry Robertson ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Santander Consumer USA Inc. dba Chrysler Capital ("Creditor") secured by an asset described as a 2011 Jeep Grand Cherokee ("Vehicle") is determined to be a secured claim in the amount of \$12,315.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$12,315.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

8. [12-31671-E-13](#) **CHRISTIAN NEWMAN**
DPC-2 **Peter Macaluso**

**CONTINUED MOTION TO DETERMINE
FINAL CURE AND MORTGAGE
PAYMENT RULE 3002.1
1-11-18 [\[285\]](#)**

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, Creditor, and Office of the United States Trustee on January 11, 2018. By the court’s calculation, 47 days’ notice was provided. 28 days’ notice is required.

The Motion to Determine Final Cure and Mortgage Payment 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 Determine Final Cure and Mortgage Payment is granted, with the court determining that upon completion of the Plan all arrearages on Creditor’s claim had been cured and payments on the obligation were current as of the end of the Plan, July 31, 2017 (the final payment having been disbursed to Creditor on September 29, 2017 by the Chapter 13 Trustee).

David Cusick (“the Chapter 13 Trustee”) moves for the court to determine the final cure and payment on a mortgage pursuant to Federal Rule of Bankruptcy Procedure 3002.1(h). On December 11, 2017, the Chapter 13 Trustee filed a Notice of Final Cure Payment for Americas Servicing Company. Dckt. 283. US Bank National Association, as Trustee for Structured Asset Securities Corporation Mortgage Pass-Through Certificates, Series 2007-EQ1, (“Creditor”) filed a Response to the Notice stating that pre-petition default payments had been made in full but that it was owed \$7,792.43 in post-petition payments.

The Chapter 13 Trustee disagrees with Creditor’s assertion that its claim has not been cured. In support of that disagreement, the Chapter 13 provides an accounting for all payments being made through September 2017. *See* Exhibits A & B, Dckt. 290. The Chapter 13 Trustee argues that Creditor’s accounting includes multiple duplicative entries for the same dates, records that do not match the Proofs of Claim and

Notices of Mortgage Payment Change, and shows payments of \$10,143.77 that were not made by the Chapter 13 Trustee.

The Chapter 13 Trustee argues that \$96,108.87 was due through January 2018 to Creditor for ongoing mortgage payments.

CREDITOR'S RESPONSE

Creditor filed a Response on February 13, 2018. Dckt. 294. Creditor responds that its ledgers do not show the post-petition payments as being current. Creditor states that it and its counsel are reconciling the Chapter 13 Trustee's records with its own accounting and all notices filed in this case to uncover the discrepancy, but they have not resolved the matter yet.

Creditor requests additional time to complete its research and to determine whether the matter has been resolved or to supplement the record.

DEBTOR'S RESPONSE

Christian Newman ("Debtor") filed a Response on February 13, 2018. Dckt. 296. Debtor supports the Chapter 13 Trustee's accounting that all payments have been made and are current.

FEBRUARY 27, 2018 HEARING

At the hearing, the parties requested a continuance to allow Creditor to complete its review of payment records, to meet with Debtor's counsel, and to determine whether this matter may be resolved by agreement of the parties. Dckt. 298. The court continued the hearing to 3:00 p.m. on April 3, 2018. *Id.*

CHAPTER 13 TRUSTEE'S STATUS REPORT

The Chapter 13 Trustee filed a Status Report on March 27, 2018. Dckt. 299. He reports that neither Debtor nor any creditor has responded, but that Creditor filed a Notice of Mortgage Payment Change on March 3, 2018, that increases the mortgage payment from \$1,680.09 to \$1,695.39 effective April 1, 2018.

RULING

Creditor U.S. Bank, N.A., as trustee, a federally insured financial institution fails to provide any evidence in opposition to Motion. Creditor U.S. Bank, N.A., as trustee, a federally insured financial institution offers no evidence, or even an argument by its attorney, why it has no records of the payments received and applied to this obligation over the five years of this Plan.

Telling is that no officer or employee has been presented to provide testimony under penalty of perjury that there is this alleged substantial post-petition default. This unsupported argument by counsel for Creditor U.S. Bank, N.A., as trustee, a federally insured financial institution, flies in face of the evidence presented by the Chapter 13 Trustee.

No explanation is provided by U.S. Bank, N.A., as trustee, a federally insured financial institution why it has to have its outside counsel working to reconcile the internal bank records.

In the Response to Notice of Final Cure Payment, US Bank, N.A., as trustee, a federally insured financial institution states that the payments on the claim are in default for the post-petition periods from August 1, 2017, in the amounts totaling \$7,792.43. December 29, 2017 Filed Docket Entry. The attachment purporting to show the payments received, and not received, is very confusing. It shows payments received. Then it shows negative entries for the same dates. The information appears to be all but nonsensical.

In comparison, the Chapter 13 Trustee provides evidence of the payments being made each month through the end of this plan on July 31, 2017. (It appears that the payment made on September 29, 2017, is for the monthly of June and July, 2017. Exhibits A and B, Dckts. 290.

It appears that the alleged default arises after the end of the Plan - August 2017. It appears that the pre-petition arrearage was cured and that there is no post-petition arrearage through the end of the Plan. After the Plan ended in July 2017, there were no further payments to be made by the Chapter 13 Trustee.

Creditor has not presented any evidence that its claim has not actually been cured. Instead, Creditor presents to the court that it is investigating still how its records contradict with those of the Chapter 13 Trustee. Even after the court has provided additional time for review, Creditor has not resolved its records.

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 Determine Final Cure and Mortgage Payment filed by Curtis Heigher (“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 Determine Final Cure Payment is granted, with the court determining that upon completion of the Plan all arrearages on Creditor’s claim had been cured and payments on the obligation were current as of the end of the Plan, July 31, 2017 (the final payment having been disbursed to Creditor on September 29, 2017 by the Chapter 13 Trustee).

9. [18-20578-E-13](#) **CONNIE MALLAVIA**
DPC-1 **Stephan Brown**

**OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK**
3-8-18 [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 8, 2018. 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.

David Cusick (“the Chapter 13 Trustee”) opposes confirmation of the Plan on the basis that Connie Mallavia (“Debtor”) filed the Plan on the wrong form.

The Chapter 13 Trustee’s objection is well-taken. The Chapter 13 Trustee argues that the Plan is based upon a plan form that is no longer effective now that the court has adopted a new plan form as of December 1, 2017. The Plan is based on a prior plan form, which is a violation of Federal Rule of Bankruptcy Procedure 3015.1 and General Order 17-03.

Debtor has not filed a new plan on the correct form.

The Plan does not comply with the Federal Rules of Bankruptcy Procedure. 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 David Cusick (“the Chapter 13 Trustee”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

10. [17-25486-E-13](#) **CHERYL HANSEN** **MOTION TO CONFIRM PLAN**
SS-5 **Scott Shumaker** **2-16-18 [97]**

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 16, 2018. By the court’s calculation, 46 days’ notice was provided. 42 days’ notice is required. FED. R. BANKR. P. 2002(b); 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.

Cheryl Hansen (“Debtor”) seeks confirmation of the Amended Plan because payments for Debtor’s first mortgage are now being paid directly to Nationstar (through a Trial Loan Modification approved by the court), and to adjust for the loss of the \$1,000.00 monthly contribution from Debtor’s boyfriend and receipt of a monthly \$400.00 through Sacramento County’s “Beanstalk” food program beginning March 2018. Dckt.99. The Amended Plan calls for \$3,070.00 to be paid through January 2018

with \$632.00 monthly payments beginning February 2018 and continuing through the sixtieth month. Dckt. 101. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick (“the Chapter 13 Trustee”) filed an Opposition on March 19, 2018. Dckt. 105. The Chapter 13 Trustee argues that the Plan is underfunded because ongoing mortgage payments were due to be paid by the Chapter 13 Trustee during September, October, and November 2017, but he paid only one of those because Debtor was delinquent with plan payments.

RULING

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 Cheryl Hansen (“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.

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 8, 2018. 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.

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

- A. Eric Ferrari (“Debtor”) failed to appear at the first Meeting of Creditors,
- B. Debtor is delinquent,
- C. Debtor failed to file a Business Budget detailing business income and expenses, and
- D. Debtor failed to file the requisite business documents.

The Chapter 13 Trustee’s objections are well-taken. Debtor did not appear at the Meeting of Creditors, but the Chapter13 Trustee’s report from the March 15, 2018 meeting indicates that Debtor resolved this ground by appearing.

The Chapter 13 Trustee asserts that Debtor is \$700.00 delinquent in plan payments, which represents one month of the \$700.00 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).

The Chapter 13 Trustee argues that 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 has not provided the required attachment.

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

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

11 U.S.C. § 521(e)(2)(A); FED. R. BANKR. P. 4002(b)(3). Those documents are required seven days before the date set for the first meeting. 11 U.S.C. § 521(e)(2)(A)(I). Without Debtor submitting all required documents, the court and the Chapter 13 Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325.

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

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

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

12.

[16-27099-E-13](#)
ALF-2

JENNIFER BORBA
Ashley Amerio

MOTION TO MODIFY PLAN
2-26-18 [\[42\]](#)

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 26, 2018. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(g) (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.

Jennifer Borba ("Debtor") seeks confirmation of the Modified Plan because she was injured and went onto temporary disability last summer and then afterward discovered that she is pregnant and is scheduled for delivery in late June or early July 2018. Dckt. 45. The Modified Plan proposes plan payments of 11,028.00 through month sixteen, \$350.00 per month for months seventeen through twenty-three, and \$1,231.00 for months twenty-four through sixty, with a 29% dividend to nonpriority unsecured claims. Dckt. 44. The Plan also calls for no administrative expenses to be disbursed through the twenty-third month of the Plan, with \$100.00 per month to be set aside per month for months twenty-four through sixty. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OBJECTION

David Cusick ("the Chapter 13 Trustee") filed an Objection on March 19, 2018. Dckt. 48. The Chapter 13 Trustee asserts that Debtor is \$350.00 delinquent in plan payments, which represents one month of the \$350.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

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 sixty-four months due to the Chapter 13 Trustee's calculations showing that claims are higher than the Plan proposes to pay. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

The Chapter 13 Trustee also raises concerns about the Additional Provisions of the Plan. They call for \$0.00 to be disbursed to administrative expenses during the first twenty-three months when the Chapter 13 Trustee is not distributing any anyway because none are due. The Chapter 13 Trustee is uncertain if Debtor intends for the Chapter 13 Trustee to begin reserving funds in the twenty-fourth month, even if no administrative expenses are incurred.

DEBTOR'S REPLY

Debtor filed a Reply on March 20, 2018. Dckt. 51. Debtor argues that she is not delinquent under the proposed plan, with her bank records showing a payment of \$350.00 on March 14, 2018. Debtor notes that the TFS system also shows that payment as cleared on March 19, 2018.

As to the plan term, Debtor proposes increases the plan payment in months twenty-four through sixty to \$1,349.00.

Debtor also argues that having administrative expenses set aside is beneficial to the Estate because counsel has performed significant post-confirmation work.

CHAPTER 13 TRUSTEE'S RESPONSE

The Chapter 13 Trustee filed a Response on March 22, 2018. Dckt. 56. The Chapter 13 Trustee notes that Debtor is now current with plan payments. He notes that the proposed increase is sufficient to pay claims, but it will not be enough to pay significant attorney's fees (roughly \$280.27).

The Chapter 13 Trustee argues that setting aside \$100.00 per month when no administrative expenses are due or called for under the plan or when no application for fees has been filed creates an undue hardship to administer. He argues that the current software does not have the ability to hold for attorney's fees in an increasing amount each month, meaning that the Chapter 13 Trustee's staff would need to review and make changes on the case record each month to increase the amount held.

The Chapter 13 Trustee notes that the Plan will not complete in thirty-seven months with the inclusion of the \$100.00 per month administrative expense. He calculates that the plan payments would need to increase to \$1,450.00 in month twenty-four to fund the Plan and pay attorney's fees of \$3,700.00.

RULING

The Chapter 13 Trustee has shown that Debtor's proposal to increase the plan payment beginning in month twenty-four is not to a sufficient amount to complete the Plan timely because of the predicted attorney's fees. If Debtor's counsel wishes to receive fees for post-confirmation work, then a separate

motion would be appropriate. 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 Jennifer Borba (“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.

- F. Debtor failed to provide tax returns;
- G. Debtor's Social Security Number conflicts with what is reported in this case;
- H. Debtor has not provided full names on the petition; and
- I. Debtor failed to list all assets.

The Chapter 13 Trustee's objections are well-taken. He 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 is above-median income and fails to propose all disposable income into the Plan. Debtor's monthly disposable income shows a net excess of income of \$5,524.64, but the Plan proposes 0% to unsecured claims. Schedule J monthly income totals \$5,773.32, the Plan and proposes a payment of \$4,502.38.

Debtor's treatment of a student loan as an additional provision requiring separate treatment violates 11 U.S.C. § 1325(b)(1). Debtor includes a \$600 expense for a student loan, which would be normally paid as an unsecured claim under the Plan. Therefore, Debtor's disposable income is \$6,373.32 (\$5,773.32 + \$600), and Debtor can increase their plan payment.

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 \$600 student loan is not disclosed as a debt on Schedule E/F. Debtor stated in the Meet of Creditor that he forgot to list approximately \$30,000 in student loan debt.

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). 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 2016 tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A); 11 U.S.C. § 1325(a)(9); FED. R. BANKR. P. 4002(b)(3).

The Chapter 13 Trustee was unable to verify Debtor's Social Security number because the number provided does not match the first digit of the court's record.

Debtor failed to provide their full name and abbreviated their middle names on the Petition rather than listing their full legal names.

Debtor has supplied insufficient information relating to a 2010 Acura to assist the Chapter 13 Trustee in determining the value of the vehicle. Debtor fails to report the ownership interest on Schedule A/B.

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

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

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

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 9, 2018. By the court’s calculation, 53 days’ notice was provided. 42 days’ notice is required. FED. R. BANKR. P. 2002(b); 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.

Robert Godfrey III (“Debtor”) seeks confirmation of the Amended Plan to include payment to a claim for Schools Financial Credit Union. Dckt. 37. The Amended Plan proposes to pay \$638.00 per month for twenty-nine months, then \$940.00 per month for eighteen months, and then \$1,238.00 per month for thirteen months, with a zero percent dividend to nonpriority unsecured claims. Dckt. 38. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

David Cusick (“the Chapter 13 Trustee”) filed an Opposition on March 20, 2018. Dckt. 49. The Chapter 13 Trustee alleges that the Plan violates 11 U.S.C. § 1325(b)(1), which provides:

If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or the plan provides that all of the debtor’s projected disposable income to be received in the applicable

commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan.

The Plan proposes to pay a zero percent dividend to unsecured claims, though Debtor's projected disposable income under 11 U.S.C. § 1325(b)(2) totals \$99,184.20. The Chapter 13 Trustee calculates that there are errors on Form 122C-1 about business expenses, household member deductions, direct payments from a spouse, and vehicle payments from a non-filing spouse. He also notes that there are errors on Form 122C-2 about deductions for dependents, public transportation, additional health care expenses, additional home energy costs, priority claims, and qualified retirement deductions. Thus, the court may not approve the Plan.

The Chapter 13 Trustee argues that the Plan may not have been proposed in good faith. 11 U.S.C. § 1325(a)(3). For one, he notes that Debtor's non-filing spouse is supposedly paying debts through a consolidation company, but Debtor deducts significant expenses on Schedule J that do not appear reasonable and necessary. Debtor and his spouse provided pay stubs for January through March 2018 showing bonus income that is not calculated into Schedule I. Expenses for utilities may be billed bi-monthly or quarterly, and the Chapter 13 Trustee requests additional information to ensure that the expenses are not less. Out-of-pocket medical expenses may not be monthly expenses without more information as well. Debtor proposes to withhold additional amounts for taxes, but the Plan does not provide for those funds. Debtor's spouse's debt consolidation payments end during the plan term, but the Plan does not propose increasing payments, and Debtor's spouse also has vehicle payments that end during the Plan but are not provided for through plan payment increases.

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). The Chapter 13 Trustee notes that the Plan does not provide for Wells Fargo Bank's secured claim against purchases made at California Backyard. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

RULING

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 Robert Godfrey III ("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.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on February 14, 2018. By the court’s calculation, 48 days’ notice was provided. 42 days’ notice is required. FED. R. BANKR. P. 2002(b); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied.

Michael Scallin (“Debtor”) seeks confirmation of the Amended Plan to adjust the plan duration from thirty-six to sixty months. Dckt. 30. The Amended Plan calls for a sixty month Plan with payments in the amount of \$545.00, with a 0.00% dividend to unsecured claims. Dckt. 31. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

David Cusick (“the Chapter 13 Trustee”) filed an Opposition on March 19, 2018. Dckt. 38. Debtor has not provided the Chapter 13 Trustee with 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); 11 U.S.C. § 1325(a)(9); FED. R. BANKR. P. 4002(b)(3). That is an independent ground to deny confirmation. 11 U.S.C. § 1325(a)(1).

The Internal Revenue Service asserts a claim of \$20,525.75 in this case. Debtor’s Schedule D does not provide for the Internal Revenue Service’s (“IRS”) claim, instead providing for it as an unsecured priority claim for \$9,043.00 on Schedule E/F. Dckt. 17. The Plan does not provide for treatment of this as

a secured claim, but instead as an unsecured claim, which Debtor proposes to pay a \$0.00 monthly dividend on account of the claim. Debtor cannot comply with the Plan. 11 U.S.C. § 1325(a)(6).

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 eighty-eight months due to not providing for the IRS's claim. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

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

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

The Plan proposes to pay a zero percent dividend to unsecured claims, which total \$196,475.22. The Chapter 13 Trustee argues that Debtor's claimed expenses on Form 122C-2 are either incorrect or not supported by the record. Additionally, Debtor amended his Statement of Current Monthly Income, from \$3,640.00 to \$8,223.33. Dckt. 1, 35. Based on the Chapter 13 Trustee's calculation, Debtor's projected disposable income under 11 U.S.C. § 1325(b)(2) totals \$891.86, instead of the \$289.29 reported by Debtor.

On December 6, 2017, the Chapter 13 Trustee objected to the confirmation of Debtor's prior proposed plan, in part, because Debtor's pay advices indicated that Debtor had understated his income on Schedule I. Dckt. 19. Based on Debtor's pay advices, the Chapter 13 Trustee noted that Debtor's income should have been \$8,692.00, rather than the \$3,640.00 reported. However, on the amended Schedules filed by Debtor, though the income now being reported is \$8,223.33, Debtor has amended living expenses without providing evidence of such expenses. The Chapter 13 Trustee notes that the increase in living expenses uses up the additional funds from Debtor's increased income, while the Plan payment decreases with the Amended Plan.

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

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by Michael Scallin ("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.

11 U.S.C. § 1328(f) provides that a court shall not grant a discharge if a debtor has received a discharge “in a case filed under chapter 7, 11, or 12 of this title during the 4-year period preceding the date of the order for relief under this chapter.” 11 U.S.C. § 1328(f)(1).

Here, Debtor received a discharge under 11 U.S.C. § 727 on March 10, 2014, which is less than four years preceding the date of the filing of the instant case. Case No. 13-34888, Dckt. 28. Therefore, pursuant to 11 U.S.C. § 1328(f)(1), Debtor is not eligible for a discharge in the instant case.

Therefore, the Objection is sustained. Upon successful completion of the instant case (Case No. 17-27629), the case shall be closed without the entry of a discharge, and Debtor shall receive no discharge in the instant case.

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

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

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

IT IS ORDERED that Objection to Discharge is sustained, and upon successful completion of the instant case, Case No. 17-27629, the case shall be closed without the entry of a discharge.

Final Ruling: No appearance at the April 3, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 23, 2018. By the court’s calculation, 39 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(g) (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. Manuel Madrid and Virginia Madrid (“Debtor”) have filed evidence in support of confirmation. David Cusick (“the Chapter 13 Trustee”) filed a Response indicating non-opposition on March 16, 2018. Dckt. 93. Though the Chapter 13 Trustee is not opposed to Debtor’s Motion, he requests that the Plan payments in the order confirming clarify that the payments under the Plan are, “\$20,709.86 to be paid through January 2018 (26 months), Payments for the remaining 34 months commencing February 2018 shall be \$1,186.00 per month.” 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 Manuel Madrid and Virginia Madrid (“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 23, 2018, as amended to state that \$20,709.86 has been paid through January 2018 and that the remaining payments commencing February 2018 shall be \$1,186.00 per month, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick (“the Chapter 13 Trustee”) for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.