

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

April 4, 2017, at 3:00 p.m.

1. **16-24701-E-13** **KHAMMAY/KHAMMAI** **MOTION TO CONFIRM PLAN**
TJW-1 **PHOMMAVONGSA** **2-8-17 [43]**
 Timothy Walsh

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, and Office of the United States Trustee on February 8, 2017. By the court’s calculation, 55 days’ notice was provided. 42 days’ notice is required.

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.

Khammay Phommavongsa and Khammai Phommavongsa (“Debtor”) seek confirmation of the Amended Plan because it reflects recent financial information about income and expenses for Debtor. Dckt. 43. The Amended Plan is identical to one filed on July 19, 2016, but it is now supported by amended Schedules I and J, showing contribution from Debtor’s mother, who Debtor cares for, expenses for caring for Debtor’s mother, and updated utility bills. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

TRUSTEE’S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an Opposition on March 20, 2017. Dckt. 57. The Trustee alleges that the Plan violates 11 U.S.C. § 1325(b)(1), which provides:

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

On August 31, 2016, Debtor filed an Amended Schedule J that removed a \$450.00 expense for life insurance based on testimony at the meeting of creditors that Debtor no longer had the expense. *See* Dckt. 18. Later, though, Debtor filed another Amended Schedule J that once again included the life insurance expense. The Trustee argues that Debtor should be paying \$605.75 each month (\$450.00 life insurance expense + \$155.75 current net income).

The Trustee also argues that Debtor has not provided all disposable income because there are excess funds from tax refunds. Debtor received a combined \$5,364.00 from federal and state tax refunds in 2015, but Debtor proposes to pay only \$100.00 per month for thirty-six months. Thus, the court may not approve the Plan.

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

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by 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.

2. [17-20601-E-13](#) DPC-1 DENNIS/IRENE SINGH
Scott Hughes

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
3-7-17 [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 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 and Debtor’s Attorney on March 7, 2017. 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 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 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 Objection to Confirmation of Plan is sustained.

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that:

- A. Debtor is \$4,565.00 delinquent.
- B. Debtor has not provided all required business documents.
- C. Debtor has listed a questionable expense and has not proposed all disposable income.
- D. Debtor has not reported all assets.
- E. Debtor’s Statement of Financial Affairs is inaccurate.

Plan Payment Default

The Trustee's objections are well-taken. The Trustee asserts that Debtor is \$4,565.00 delinquent in plan payments, which represents one month of the \$4,565.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Failure to Provide Documents

Debtor has failed to timely provide the 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 Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325.

Failure to Provide Projected Disposable Income

The Trustee questions Debtor's expense deduction on Form 122C-2 of \$50.00 for garbage and waste. The Trustee alleges that the Plan violates 11 U.S.C. § 1325(b)(1), which provides:

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

The Trustee argues that Debtor received a tax refund in the amount of \$9,720.00 in 2015. The Trustee requests that Debtor pay future tax refunds (including the 2016 refund) into the Plan because no refunds have been exempted on Schedule C.

Failure to Provide Chapter 7 Liquidation Value

The 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 Trustee states that Debtor Dennis Singh reported at the meeting of creditors that he is an insurance broker, but he has not listed any aging report or pending commissions on insurance sales and renewals. Debtor also deducts \$52.00 for life insurance on Schedule J, despite not listing any interest in life insurance on Schedule B.

Failure to Provide for Secured Claims

The Trustee argues that Debtor's Plan may be infeasible because Debtor has not provided for Proofs of Claim 7 & 8, filed by Santander Consumer USA, for two vehicles: a 2016 Honda Accord and a 2015 Nissan Rogue.

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

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

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

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

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

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

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

Failure to Provide Current Financial Information

Finally, the Trustee Objects to confirmation because the Statement of Financial Affairs filed in this case appears to be from a prior bankruptcy filing. Its data is either out of date or reported inaccurately. Debtor lists employment income for 2013 and 2014 as \$0.00 each year and \$43,528.00 for 2012. Debtor

listed property with a Notice of Default recorded on December 10, 2013. Debtor reports paying Scott Hughes \$281.00 for bankruptcy services on February 12, 2014. Lastly, Debtor reports owning LG Financial Group from November 2013 through the present, but at the March 2, 2017 Meeting of Creditors, Debtor reported that the business ceased in 2014 and that Debtor operated the undisclosed Promenade Insurance Agency.

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 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, and Office of the United States Trustee on February 8, 2017. By the court’s calculation, 55 days’ notice was provided. 42 days’ notice is required.

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.

Kevin McCann and Brandee McCann (“Debtor”) seek confirmation of the Amended Plan “because the First Amended Chapter 13 Plan was denied.” Dckt. 61. The Amended Plan addresses attorneys’ fees, Class 5 claims for the Internal Revenue Service and California State Board of Equalization, the Class 7 dividend, and a claim filed by the Franchise Tax Board. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

TRUSTEE’S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an Opposition on March 8, 2017. Dckt. 74. Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Amended Schedule J line 23c states that Debtor has net income of \$140.00. Dckt. 65. Debtor states that the plan payment will be increased once Debtor’s 2005 Ford Expedition is paid for completely in month twenty-three of the Plan. The Plan calls for the plan payment to increase to \$760.00, but Debtor is paying only \$350.00 per month for the vehicle. That payment plus Debtor’s net income totals \$490.00.

Additionally, Debtor listed renters’ insurance twice on Amended Schedule J, once at line 4b and again at line 20c, meaning that net income should actually be \$155.00. Without an accurate picture of Debtor’s financial reality, the court cannot determine whether the Plan is confirmable.

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 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.

4. [17-20302-E-13](#) **RAYMOND KEH**
DPC-1 **George Burke**

**OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK**
3-1-17 [[12](#)]

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

Below is the court’s tentative ruling, rendered on the assumption that there will be no opposition to the 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 and Debtor’s Attorney on March 1, 2017. By the court’s calculation, 34 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 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 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 Objection to Confirmation of Plan is sustained.

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that the Trustee cannot determine whether Debtor can make plan payments or comply with the Plan.

The Trustee’s objections are well-taken. Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor reported net income of \$3,645.91 on Schedule J, which is \$1,645.91 more than the proposed \$2,000.00 plan payment. Debtor also listed a \$600.00 expense on Schedule J for support of wife’s family in the Philippines, but the Trustee does not know whether Debtor is attempting to divert income with that expense.

Debtor received a 2015 federal tax refund in the amount of \$11,552.00, but no future tax refunds are projected on Schedule I. The Trustee argues that the refund could be used for an additional \$962.67 in monthly disposable income. Including full net income and the tax refund would allow the Plan to complete in twenty-one months.

Finally, at the Meeting of Creditors, Debtor admitted to obtaining a post-petition loan from his 401K in the amount of \$32,000.00. Debtor used \$20,000.00 to pay an existing loan from his brother and used \$11,000.00 for funeral expenses for Debtor's father. There is not repayment amount listed in the schedules for that post-petition loan. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

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

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

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

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

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

Final Ruling: No appearance at the April 4, 2017 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, creditors, parties requesting special notice, and Office of the United States Trustee on February 17, 2017. By the court’s calculation, 46 days’ notice was provided. 35 days’ notice is required.

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 trustee to propose a modification to a plan after confirmation. The Trustee has filed evidence in support of confirmation. No opposition to the Motion has been filed by Debtor or by creditors.

The Trustee proposes to modify the Plan to make plan payments total \$90,998.00 paid through month forty, \$500.00 per month for the remaining twenty months, and a \$75,000.00 lump sum for no less than 100% paid to unsecured claims. 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 Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

- C. Debtor and Debtor's spouse, in separate bankruptcy cases, treat the same property differently, causing the Trustee to be unsure how much is being paid in rent or mortgage payments.
- D. Debtor fails the liquidation analysis because of \$17,500.00 in undisclosed funds.
- E. Debtor exceeds the secured claim debt limit.
- F. Debtor's Plan relies on a Motion to Value Secured Claim.
- G. Debtor cannot afford plan payments.
- H. All secured claims may not have been disclosed.

The Trustee's objections are well-taken. The Trustee asserts that Debtor is \$3,799.00 delinquent in plan payments, which represents one month of the \$3,799.00 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 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. To attempt to confirm a plan while failing to appear and be questioned by the Trustee and any creditors who appear represents a failure to cooperate. *See* 11 U.S.C. § 521(a)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

In Debtor's spouse's bankruptcy case (No. 16-21294), filed on March 2, 2016, Debtor's spouse changed the treatment of Franklin Management Corp. listed in Classes 1 and 2 for a claim secured by a first deed of trust to Class 3 to be surrendered. In that case, Schedule J was also amended to account for a \$2,500.00 monthly rental expense. In this case, Debtor listed the mortgage in Class 1. The Trustee is uncertain whether Debtor is paying rent or mortgage payments. That is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(3).

The 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 Trustee states that \$2,500.00 in monthly rent from June 2016 to January 2017 would equal \$17,500.00 of undisclosed funds on Schedule B. From Debtor's spouse filing an amended plan in his bankruptcy case to Debtor filing this case, they have not shown evidence of making seven mortgage payments.

The Trustee asserts that Debtor is over the secured debt limit, disqualifying Debtor from Chapter 13 relief. Pursuant to 11 U.S.C. § 109(e), an individual with regular income who owes, on the date of filing of the petition, "noncontingent, liquidated, secured debts" of less than \$1,184,200.00 may be a debtor under Chapter 13. Here, Debtor owes \$1,227,002.00 in secured debt according to Schedule D. Debtor has not filed a motion to value secured claim of Franklin Management Corp. holding a claim for \$307,000.00.

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of Franklin Management Corp. Debtor has failed to file a Motion to Value the Secured Claim of Franklin Management Corp., however. Without the court valuing the claim, the Plan is not feasible. 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). Wilmington Trust/Wells Fargo Bank has objected to the Plan, indicating that ongoing mortgage payments are \$3,285.86 with arrears of \$84,736.37. Debtor's plan lists mortgage payments of \$2,815.00 with \$70,000.00 in arrears. Debtor does not appear to be able to afford the increase. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

On Schedule B, Debtor lists interest in a 2005 Dodge Ram 1500 with a loan balance of \$10,000.00 and a 2012 Honda CRV with a loan balance of \$18,000.00. No claims are listed on Schedule D or provided for in the Plan. The Trustee argues that determining whether Debtor can make all plan payments is difficult when the treatment of all claims has not been disclosed.

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

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

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

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

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

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

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

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

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

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

The Objection to the Chapter 13 Plan filed by 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.

7.	<u>17-20506-E-13</u>	THERESITA GODINEZ	OBJECTION TO CONFIRMATION OF PLAN BY WILMINGTON TRUST, N.A.
	DWE-1	Mikalah Liviakis	3-7-17 [31]

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, and Office of the United States Trustee on March 10, 2017. By the court’s calculation, 25 days’ notice was provided. 14 days’ notice is required.

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

Wilmington Trust, National Association, as Successor Trustee to Citibank, N.A., as Trustee for Bear Stearns Asset Backed Securities Trust 2007-2, Asset Backed Certificates Series 2007-2 as serviced by Wells Fargo Bank, N.A., Creditor with a secured claim, opposes confirmation of the Plan on the basis that Debtor will not be able to afford plan payments. FN.1.

FN.1. Creditor also appears to make an argument that its secured claim is not provided for, but Creditor does not plead that ground with particularity pursuant to Federal Rule of Bankruptcy Procedure 9013. Instead, Creditor merely recites that it intends to file a proof of claim secured by Debtor's residence and evidencing certain amounts in arrears and owed outstanding.

As to the first argument that Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6), such contention is patently unreasonable on its face. Creditor asserts that Debtor cannot afford plan payments because the net income of \$3,798.04 listed on the schedules is outweighed by proposed plan payments of \$3,799.00 - less than \$2.00 a month difference.

Creditor contends that once its files its claim, sometime in the future, for which no person at Creditor has given (or may be willing) to provide a declaration, then the Plan will need to fund an additional \$14,736.37. Possibly, but Creditor has not show the court a basis for sustaining an Objection for which no evidence has been, or may be able to be, presented to the court.

With respect to the amount of the claim or current monthly payment, that rests in the hands of Creditor, so long as it files a proof of claim. But it has to file a proof of claim, not merely have its attorney argue that there is some claim, unsupported by evidence, out there. FN.1.

FN.1. The rejection of this objection may be but a Pyrrhic victory for the Debtors. If this asserted creditor is correct and the unprovided for claim exists, the court can envision shortly seeing a motion for relief from the stay. 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 unprovided for cure of the arrearage 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.

The Objection is overruled.

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

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

David Cusick, the Chapter 13 Trustee, filed a Non-Opposition on March 20, 2017. Dckt. 84.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

(i) unnecessary duplication of services; or

(ii) services that were not—

(I) reasonably likely to benefit the debtor's estate;

(II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). An attorney must “demonstrate only that the services were reasonably likely to benefit the estate at the time rendered,” not that the services resulted in actual, compensable, material benefits to the estate. *Ferrette & Slatter v. United States Tr. (In re Garcia)*, 335 B.R. 717, 724 (B.A.P. 9th Cir. 2005) (citing *Roberts, Sheridan & Kotel, P.C. v. Bergen Brunswick Drug Co. (In re Mednet)*, 251 B.R. 103, 108 (B.A.P. 9th Cir. 2000)). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

APPLICABLE LAW

Reasonable Fees

A bankruptcy court determines whether requested fees are reasonable by examining the circumstances of the attorney's services, the manner in which services were performed, and the results of the services, by asking:

- A. Were the services authorized?
- B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?
- C. Are the services documented adequately?
- D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?
- E. Did the attorney exercise reasonable billing judgment?

In re Garcia, 335 B.R. at 724 (citing *In re Mednet*, 251 B.R. at 108; *Leichty v. Neary (In re Strand)*, 375 F.3d 854, 860 (9th Cir. 2004)).

Reasonable Billing Judgment

Even if the court finds that the services billed by an attorney are “actual,” meaning that the fee application reflects time entries properly charged for services, the attorney must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the services provided because the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney “free reign to run up a [fees and expenses] tab without considering the maximum probable recovery,” as opposed to a possible recovery. *Id.*; see also *Brosio v. Deutsche Bank Nat'l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) (“Billing judgment is mandatory.”). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney is obligated to consider:

- (a) Is the burden of the probable cost of legal services disproportionately large in relation to the size of the estate and maximum probable recovery?
- (b) To what extent will the estate suffer if the services are not rendered?
- (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

In re Puget Sound Plywood, 924 F.2d at 958–59 (citing *In re Wildman*, 72 B.R. 700, 707 (N.D. Ill. 1987)).

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including opposing a motion to dismiss, objecting to a notice of

mortgage payment change, and proposing a modified plan. The court finds the services were beneficial to the Client and bankruptcy estate and were reasonable.

“No-Look” Fees

In this District, the Local Rules provide consumer counsel in Chapter 13 cases with an election for the allowance of fees in connection with the services required in obtaining confirmation of a plan and the services related thereto through the debtor obtaining a discharge. Local Bankruptcy Rule 2016-1 provides, in pertinent part,

(a) Compensation. Compensation paid to attorneys for the representation of chapter 13 debtors shall be determined according to Subpart (c) of this Local Bankruptcy Rule, unless a party-in-interest objects or the attorney opts out of Subpart (c). The failure of an attorney to file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys, shall signify that the attorney has opted out of Subpart (c). When there is an objection or when an attorney opts out, compensation shall be determined in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017, and any other applicable authority.”

...

(c) Fixed Fees Approved in Connection with Plan Confirmation. The Court will, as part of the chapter 13 plan confirmation process, approve fees of attorneys representing chapter 13 debtors provided they comply with the requirements to this Subpart.

(1) The maximum fee that may be charged is \$4,000.00 in nonbusiness cases, and \$6,000.00 in business cases.

(2) The attorney for the chapter 13 debtor must file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys.

(3) If the fee under this Subpart is not sufficient to fully and fairly compensate counsel for the legal services rendered in the case, the attorney may apply for additional fees. The fee permitted under this Subpart, however, is not a retainer that, once exhausted, automatically justifies a motion for additional fees. Generally, this fee will fairly compensate the debtor’s attorney for all preconfirmation services and most postconfirmation services, such as reviewing the notice of filed claims, objecting to untimely claims, and modifying the plan to conform it to the claims filed. Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation. Form EDC 3-095, Application and Declaration RE: Additional Fees and Expenses in Chapter 13 Cases, may be used when seeking additional fees. The necessity for a hearing on the application shall be governed by Fed. R. Bankr. P. 2002(a)(6).

Lodestar Analysis

If Applicant believes that there has been substantial and unanticipated legal services that have been provided, then such additional fees may be requested as provided in Local Bankruptcy Rule 2016-1(c)(3). The attorney may file a fee application, and the court will consider the fees to be awarded pursuant to 11 U.S.C. §§ 329, 330, and 331. In the Ninth Circuit, the customary method for determining the reasonableness of a professional's fees is the "lodestar" calculation. *Morales v. City of San Rafael*, 96 F.3d 359, 363 (9th Cir. 1996), *amended*, 108 F.3d 981 (9th Cir. 1997). "The 'lodestar' is calculated by multiplying the number of hours the prevailing party reasonably expended on the litigation by a reasonable hourly rate." *Morales*, 96 F.3d at 363 (citation omitted). This carries through to bankruptcy cases. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves "multiplying the number of hours reasonably expended by a reasonable hourly rate." *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). "This calculation provides an objective basis on which to make an initial estimate of the value of a lawyer's services." *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). A compensation award based on the lodestar is a presumptively reasonable fee. *In re Manoa Fin. Co.*, 853 F.2d 687, 691 (9th Cir. 1988).

In rare or exceptional instances, if the court determines that the lodestar figure is unreasonably low or high, it may adjust the figure upward or downward based on certain factors. *Miller v. Los Angeles Cty. Bd. of Educ.*, 827 F.2d 617, 620 n.4 (9th Cir. 1987). Therefore, the court has considerable discretion in determining the reasonableness of a professional's fees. *Gates v. Duekmejian*, 987 F.2d 1392, 1398 (9th Cir. 1992). It is appropriate for the court to have this discretion "in view of the [court's] superior understanding of the litigation and the desirability of avoiding frequent appellate review of what essentially are factual matters." *Hensley*, 461 U.S. at 437. Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate. *See In re Placide*, 459 B.R. at 73 (citing *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

FEES AND COSTS & EXPENSES REQUESTED

Fees

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories.

Motion to Dismiss: Applicant spent 2.95 hours in this category. Applicant assisted Client with opposing the Trustee's motion to dismiss caused by the appearance of being financially overstretched after a notice of mortgage payment change was filed.

Objection to Notice of Mortgage Payment Change: Applicant spent 2.85 hours in this category. Applicant assisted Client with opposing an unanticipated increase issued by a lender.

Motion to Modify Plan: Applicant spent 4.95 hours in this category. Applicant assisted Client with modifying the Plan after the Trustee moved to dismiss for delinquency.

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of OneMain Financial Group, LLC. Debtor filed a Motion to Value the Secured Claim of OneMain Financial Group, LLC, and the court granted it on March 21, 2017. *See* Dckt. 30.

The Plan complies 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 having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is overruled, and Debtor's Chapter 13 Plan filed on January 27, 2017, is confirmed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Final Ruling: No appearance at the April 4, 2017 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 16, 2017. By the court’s calculation, 47 days’ notice was provided. 35 days’ notice is required.

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. Debtor has filed evidence in support of confirmation.

TRUSTEE’S RESPONSE

David Cusick ,the Chapter 13 Trustee, filed a Response on March 21, 2017. Dckt. 66. The Trustee states that he doe not oppose the Motion, but he questions why Debtor believes the Plan is being modified, at least partly, to account for increased amounts owed to the Internal Revenue Service and Franchise Tax Board. According to the Trustee’s records, the claims owed to those two agencies are each for \$1.00 for “Noticing Purposes Only.”

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 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, Debtor's Modified Chapter 13 Plan filed on February 16, 2017, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

11. [15-28638](#)-E-13 **JOSEPH TARR AND GINA** **MOTION TO MODIFY PLAN**
ALF-1 **CHAVES** **2-21-17 [49]**
 Ashley Amerio

Final Ruling: No appearance at the April 4, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on February 21, 2017. By the court's calculation, 42 days' notice was provided. 35 days' notice is required.

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, as amended at the hearing, is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Debtor has filed evidence in support of confirmation.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on March 16, 2017. Dckt. 56. The Trustee states that he does not oppose the Motion, but he cannot reduce payments to City Loan and Santander in month sixteen as the Plan calls for presently. The Trustee requests that the reductions be made in month seventeen.

The Modified Plan, as amended to reflect that reductions in monthly payments to City Loan and Santander Consumer USA, Inc. will occur in month seventeen, 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 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, Debtor's Modified Chapter 13 Plan filed on February 21, 2017, as amended at the hearing to reflect that reductions in monthly payments to City Loan and to Santander Consumer USA, Inc. will occur in month seventeen of the 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 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.

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 17, 2017. By the court’s calculation, 46 days’ notice was provided. 35 days’ notice is required.

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.

Stanley Hart, Jr., and Kathleen Hart (“Debtor”) seek confirmation of the Modified Plan to account for changes in filed claims. Dckt. 75. The Modified Plan adds pre-petition escrow arrears of \$72.20 owed to Wells Fargo Home Mortgage, increases the principal balance owed to Sierra Central Credit Union to \$11,909.69, and adds Patelco Credit Union’s secured claim. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

TRUSTEE’S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an Opposition on March 17, 2017. Dckt. 81. The Trustee asserts that Debtor is \$110.00 delinquent in plan payments, which represents less than one month of the \$285.00 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 Trustee, the Plan will complete in sixty-two months due to Debtor proposing to pay less than what is owed to creditors under the proposed plan (once Trustee’s fees are considered). The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

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

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

13. [17-20551](#)-E-13 **TERRI CARTER**
DPC-1 **Scott Sagaria**

**OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK**
3-7-17 [[14](#)]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor’s Attorney on March 7, 2017. 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 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 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 Objection to Confirmation of Plan is ~~sustained~~ / ~~overruled~~.

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that:

- A. Debtor is delinquent \$353.00.
- B. The Plan exceeds sixty months.
- C. Debtor has not reported a tax refund of \$3,869.00.

DEBTOR’S REPLY

Debtor filed a Reply on March 21, 2017. Dckt. 22. Debtor states that the delinquency was cured on March 16, 2017, according to the Trustee’s website. Debtor states that a portion of the additional provisions regarding treatment of education loans was omitted. Debtor proposes adding the following additional provision language through the Order Confirming:

When the student loan debt is included, the general unsecured claims total \$204,579.33. With \$75,257.40 to fund the Class 7 claims, the Class 7 dividend would be 36.78%. The plan provides for Class 7 dividend of not less than 100%. With at least \$16,254.94 to fund the Class 7 claims and general unsecured claims of \$16,254.94, the dividend computes to 100%. By paying the educational debt outside the plan, the other creditors holding general unsecured claim are not prejudiced.

Regarding the tax refund, Debtor proposes adding an additional provision to the Plan that would provide for turnover of all state and federal income tax refunds received, if any, within one week of receipt of those funds as well as a copy of Debtor's state and federal income tax returns by no later than the sixteenth of the year beginning tax year 2017.

APRIL 4, 2017 HEARING

At the hearing, the Trustee reported that the delinquency ~~has~~/~~has not~~ been cured. Additionally, the Trustee reported that Debtor's proposals are ~~acceptable~~/~~unacceptable~~.

The Plan, as amended, ~~does~~/~~does not~~ comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is ~~sustained~~/~~overruled~~.

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

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

The Objection to the Chapter 13 Plan filed by 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~~/~~overruled~~.

14. [17-20052-E-13](#) **MARIA DE LA CRUZ**
DPC-1 **Daniel Weiss**

**OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS**
3-7-17 [54]

Final Ruling: No appearance at the April 4, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on March 7, 2017. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

The Trustee objects to Maria De La Cruz's ("Debtor") claimed exemptions under California law because Debtor claimed 100% of fair market value, instead of claiming specific dollar amounts. California Code of Civil Procedure § 703.140(b)(2)–(5) does not allow claiming 100% of fair market value and requires the claimant to list actual values. A review of Debtor's Schedule C shows that real dollar amounts have not been claimed. The Trustee's Objection is sustained, and the claimed exemptions are disallowed.

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

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

The Objection to Claimed Exemptions filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

15. [17-20460](#)-E-13 STACY JOHNSON
DPC-1 Richard Jare

**OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
3-1-17 [25]**

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 and Debtor's Attorney on March 1, 2017. By the court's calculation, 34 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 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 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 Objection to Confirmation of Plan is overruled.

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that Debtor has not projected future tax refunds on Schedule I and omits reporting the following three refunds:

- A. \$5,920.00 in 2014,
- B. \$6,813.00 in 2015, and
- C. \$6,172.00 in 2016.

TRUSTEE'S STATUS REPORT

The Trustee filed a Status Report on March 24, 2017. Dckt. 30. The Trustee reports that Debtor provided an Order Confirming at the Continued Meeting of Creditors by which Debtor proposes to pay the

Trustee 100% of all net proceeds from any future income tax refunds applicable to taxable years ending prior to the completion of the Plan, beginning tax year 2017. The Trustee states that the proposal satisfies his objection, and he asks the court to dismiss the Objection.

The Trustee having reported that his only ground for objecting is satisfied, and no other parties having objected to the plan, 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 having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is overruled, and Debtor's Chapter 13 Plan, as amended to reflect that all net proceeds from future income tax refunds beginning tax year 2017 and continuing through to the completion of Plan shall be paid to the Trustee, filed on January 24, 2017, is confirmed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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 20, 2017. By the court’s calculation, 43 days’ notice was provided. 42 days’ notice is required.

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.

Dan Miller and Meghan Miller (“Debtor”) seek confirmation of the Amended Plan because Debtor Dan Miller is unemployed. Dckt. 32. The Amended Plan proposes plan payments of \$2,000.00 with a 0.00% dividend to unsecured claims. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

TRUSTEE’S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an Opposition on March 20, 2017. Dckt. 40. Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). The Trustee notes that Debtor Dan Miller is now unemployed, and the Plan relies on Debtor receiving a loan modification because it does not propose to pay \$21,480.86 of mortgage arrears listed in Class 1.

Additionally, the Plan does not project any future income. Debtor has claimed a “Voluntary Deduction” that averages \$904.63 per month, but Debtor has not explained what the deduction is or why it is unreported on Schedule I. Debtor report receiving \$1,100 in family assistance, but the assisting family members have not filed declarations explaining whether the assistance is feasible and likely to continue. Also, Debtor has not deducted automobile insurance on Schedule J, even though three vehicles are listed

on Schedule B. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

The Trustee argues that the Plan is not feasible according to 11 U.S.C. § 1325(a)(6) because Debtor's Schedule J reduces, without explanation, expenses from \$4,868.24 to \$1,964.56. Debtor reduced food, personal items, clothing, laundry, and miscellaneous items from \$1,420.00 to \$441.00. Child care and education were reduced from \$845.00 to \$0.00, and transportation was reduced from \$700.00 to \$150.00, and the Trustee believes that those two reductions are reasonable because daycare is no longer necessary and because Debtor Dan Miller no longer travels for work. Absent explanation from Debtor as to how the proposed drastic decrease in expenses will be achieved, the court does not believe that Debtor's projection is in good faith. That is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(3).

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

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

Debtor has reported paying a car loan with a balance of either \$15,000.00 or \$18,000.00 (Statement of Financial Affairs # 6 & 8) and a monthly payment of \$480.00. The Trustee calculates that the vehicle will be paid for while the Plan is ongoing, but Debtor has not proposed increasing plan payments when the balance of the loan is paid. Similarly, Debtor has not reported when a deduction for repayment of a retirement loan will be completed so as to provide additional funds to the Plan. Thus, the court may not approve the Plan.

Additionally, the Trustee argues that Debtor has proposed Ensminger Provisions that are inaccurate. Debtor has failed to explain why Section 7.02.1 (secured claim treatment) was omitted entirely and why Section 7.02.3 was altered by removing the final sentence that "Debtor shall not commence making payments under the terms of the loan modification until it has been approved by the court."

DEBTOR'S REPLY

Debtor filed a Reply on March 27, 2017. Dckt. 43. Regarding feasibility, Debtor states that the proposed plan is an "APO plan" while Debtor pursues a loan modification. As to Debtor's ability to make plan payments, Debtor states that the proposed plan payments factor in Debtor Dan Miller being unemployed currently. Debtor promises to amend the Plan when he receives new employment.

Debtor argues that there was a voluntary deduction of \$904.63 prior to the filing of the case, meaning that it is not reported on Schedule I now because it would be improper to continue deducting. The amount is part of the disposable income analysis and is not a deduction.

For clarification of the family contribution, Debtor intends to file supplemental declarations before the hearing.

In response to the Trustee questioning Debtor's expenses, Debtor states that the budget has been cut drastically, with the father being at home with the children and with extended family members assisting Debtor currently. Debtor acknowledges that the budget is short-term until Debtor is re-employed, which Debtor projects (hopes) will occur within six months.

For auto insurance, Debtor states that Debtor's father makes insurance payments to protect the vehicle that is in his name until Debtor is re-employed.

Debtor does not oppose increasing the plan payment when the balance of Debtor's vehicle has been paid. The payoff date is estimated to be in thirty-six months. Debtor does not oppose raising the plan payment by \$480.00 in month thirty-seven.

Debtor asserts that Debtor Meghan Miller's mandatory retirement deduction was added mistakenly to the wrong column on Amended Schedule I. Debtor asserts that a June 30, 2016 paystub attached at Exhibit A shows the mandatory retirement contribution.

Finally, Debtor's counsel asserts that any omission of Ensminger Provisions was unintentional. Debtor does not including that "The debtor shall not commence making payments under the terms of the loan modification until it has been approved by the court."

RULING

While Debtor has provided some information and argument in response to the Trustee's concerns, Debtor has not convinced the court that the proposed plan is confirmable yet. Debtor has made drastic reductions to expenses that appear unreasonable and unsustainable at this time, and apparently from Debtor's Reply, the ability to abide by such a slim budget relies upon the charity of family and friends. The court, despite Debtor's promise to file supplemental declarations, does not have testimony from interested third-parties in this case that they will support Debtor financially through the bankruptcy case. 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 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. [16-21365-E-13](#)
PGM-1

DAVID/CONNIE KELLER
Peter Macaluso

MOTION TO MODIFY PLAN
2-16-17 [38]

Final Ruling: No appearance at the April 4, 2017 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, and Office of the United States Trustee on February 16, 2017. By the court's calculation, 47 days' notice was provided. 35 days' notice is required.

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. Debtor has filed evidence in support of confirmation.

TRUSTEE'S LIMITED OBJECTION

David Cusick, the Chapter 13 Trustee, filed a Limited Objection on March 17, 2017. Dckt. 50. The Trustee states that the Modified Plan reclassifies 1 800 Loan Mart from Class 2 to Class 3 and authorizes payments made to the creditor in the amount of \$640.06, but it does not authorize interest payments in the amount of \$82.09. The Trustee does not oppose a correction in the order confirming.

The Modified Plan, as amended to reflect that payments to 1 800 Loan Mart of \$640.06 and interest payments of \$82.09 are authorized, 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.

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that:

- A. Barbara Giammarco (“Debtor”) is \$778.23 delinquent in plan payments.
- B. Debtor might not be able to afford Plan payments based on Debtor’s income.

DEBTOR’S REPLY

Debtor filed a Reply on February 14, 2017. Dckt. 19. Debtor states that she made plan payments late due to not realizing that the payments began in January and not in February. However, the case is current as of the date of this reply. Debtor has also supplied the declaration of Debtor’s son, stating support of the Plan by working overtime and whatever other means necessary.

TRUSTEE’S RESPONSE

The Trustee filed a Response on February 21, 2017. Dckt. 22. The Trustee asserts that Debtor remains delinquent in plan payments because the Plan calls for \$2,100.00 each month, and Debtor only paid \$1,321.77. Debtor is \$778.23 delinquent. The Trustee states that the declaration of Debtor’s son provided said that \$200.00 per month will be supplemented to Debtor for any incidental expenses. The Trustee points out that it is not clear if the net income listed on Schedule J is accurate, in the amount of \$2,198.62.

FEBRUARY 28, 2017 HEARING

At the hearing, the court continued the matter to 3:00 p.m. on April 4, 2017, to allow Debtor time to correct her Schedules and file supplemental pleadings to address the concerns raised by the Trustee. Dckt. 24.

TRUSTEE’S STATUS REPORT

The Trustee filed a Status Report on March 22, 2017. Dckt. 29. The Trustee states that Debtor failed to file amended schedules and supplemental pleadings, and is delinquent \$778.23 in plan payments still.

DISCUSSION

The Trustee’s objections are well-taken.

The Trustee asserts that Debtor is \$778.23 delinquent in plan payments, which represents less than one month of the \$2,100.00 plan payment. According to the Trustee, the Plan in § 1.01 calls for payments to be received by the 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 may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). The Plan relies heavily on the income from Debtor’s son listed on Schedule I in the gross amount fo \$3,685.36. Based on the most recent pay advice dated December 30, 2016, Debtor’s son makes

\$15.25 per hour. The Trustee asserts that it does not appear that Debtor's son earns \$3,685.36 listed on Schedule I, as that would require over 240 hours of regular work per month. Without an accurate picture of the Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

This case appears to suffer from a lack of credible, internally consistent financial information provided by Debtor. Beginning with Schedule I, Debtor states under penalty of perjury that she has monthly income of:

- A. Wages.....\$3,685.36
- B. Social Security.....\$1,568.00
- C. Pension/Retirement.....\$1,011.86

Schedule I, Dckt. 1 at 24–25. By Debtor's statement under penalty of perjury, she has \$6,265.22 in monthly gross income. From this, she has only (\$941.00) in withholding. Schedule I then includes the following statement:

“Debtor lives with her son and disabled grandson. Her income is dedicated only to the Chapter 13 plan payment and debtors son is paying for the general living expenses for the household.

Debtors sons pay stubs are included on Schedule I and total expenses for the household is disclosed on Schedule J.”

It is unclear if Debtor is incorrectly stating under penalty of perjury that her son's income is hers, or that the son's income is in addition to the Debtor's \$6,265.22 monthly income.

Then, on Schedule J, Debtor lists her son and grandson as dependents. But now the court is told that the son is subsidizing the Debtor.

The court provided Debtor with additional time to correct the deficiencies with her Schedules, but she has failed to do so. Accordingly, the Trustee's 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 having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

19. [14-32167-E-13](#)
MKC-5

SHELDON MCRA Y
Marty Courson

MOTION TO MODIFY PLAN
2-21-17 [86]

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, and Office of the United States Trustee on February 21, 2017. By the court’s calculation, 42 days’ notice was provided. 35 days’ notice is required.

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

The Motion to Confirm the Modified Plan is granted.

Sheldon McRay (“Debtor”) seeks confirmation of the Modified Plan to reclassify Seterus, Inc. (“Creditor”) from Class 1 to Class 4 according to a loan modification. Dckt. 86. The Modified Plan moves Creditor from Class 1 to Class 4 and reduces plan payments to \$330.00 per month beginning with the February 2017 payment. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

TRUSTEE’S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an Opposition on March 20, 2017. Dckt. 97. The Trustee states first that the Modified Plan does not authorize payments he has made under the confirmed Plan, including \$61,229.36 in ongoing mortgage payments, \$6,286.85 in principal, and \$896.98 in interest on mortgage arrears.

The Trustee discusses the facts regarding Debtor's trial loan modification and states that he does not believe the payments are an issue to the Modified Plan. Pursuant to the court's direction from the hearing on the Motion to Approve Loan Modification to discuss any surplus funds paid during the trial loan period, the Trustee states that \$6,642.90 was required under the trial loan modification, and \$2,948.95 was required under the confirmed plan. The Trustee believes that Creditor may have received \$2,948.95 more than required by trial loan modification, but he notes that Creditor appears to have increased the principal by only \$4,901.22, instead of the total \$13,010.15 in arrears.

Finally, the Trustee notes that Debtor's Amended Schedule I includes \$575.00 income per month as a twelve-month estimated average of a positive mortgage surplus account. The Trustee is unsure whether the funds from that account will be available to Debtor, but he believes that the Modified Plan's feasibility remains with voluntary payments from Linda Griffin, Debtor's fiancée.

The Trustee moves for the Modified Plan to be denied, unless the order confirming authorizes the payments made by the Trustee to the mortgage under the confirmed plan.

DEBTOR'S REPLY

Debtor filed a Reply on March 27, 2017. Dckt. 101. Debtor requests that the Modified Plan be amended to include the following language: "All previous distributions by the Trustee to the mortgage under prior plans are authorized."

RULING

The Modified Plan, as amended to authorize the Trustee's payments under the confirmed plan to Creditor for mortgage payments, 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 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, Debtor's Modified Chapter 13 Plan filed on February 21, 2017, and as amended with the language that "All previous distributions by the Trustee to the mortgage under prior plans are authorized," is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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 15, 2017. By the court’s calculation, 48 days’ notice was provided. 42 days’ notice is required.

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.

John Moore (“Debtor”) seeks confirmation of the Amended Plan to increase the arrears owed on the pre-petition mortgage along with some taxes. Dckt. 55. The Amended Plan increases the principal amount of pre-petition mortgage arrears and the monthly dividend paid thereon to secured creditor Wells Fargo Bank, N.A., increases the ongoing conduit payment to said creditor, and adds the priority claim of the State Board of Equalization. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

TRUSTEE’S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an Opposition on March 8, 2017. Dckt. 60.

The Trustee asserts that Debtor is \$3,290.00 delinquent in plan payments, which represents less than one month of the \$3,345.00 plan payment. According to the Trustee, the Plan in § 1.01 calls for payments to be received by the 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 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 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.

21.	<u>17-20471</u> -E-13 DPC-1	DEANNA TORREZ Peter Macaluso	OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 3-1-17 <u>[19]</u>
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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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 and Debtor's Attorney on March 1, 2017. By the court's calculation, 34 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 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 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 Objection to Confirmation of Plan is sustained.

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that:

- A. Deanna Torrez (“Debtor”) is delinquent in her plan payments.
- B. Debtor relies on a pending Motion to Value Secured Claim.

DEBTOR’S REPLY

Debtor filed a Reply on March 21, 2017. Dckt. 27. Debtor states that she is current in plan payments by remitting the sum of \$170.00 on February 28, 2017. Debtor realizes that secured creditor Lobel Financial is improperly provided for as a Class 2B claim in the proposed plan and promises to file, set, serve, and be current under an amended plan that will provide for that debt as a Class 2A claim. A review of the docket shows that a new plan has not been filed, however.

DISCUSSION

The Trustee’s objections are well-taken.

The Trustee asserts that Debtor is \$170.00 delinquent in plan payments, which represents one month of the \$170.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6). By Debtor’s Reply, this ground appears to be resolved.

A review of Debtor’s Plan shows that it relies on the court valuing the secured claim of Lobel Financial. Debtor has filed a Motion to Value the Secured Claim of Lobel Financial that is set for hearing on April 4, 2017. However, it appears the debt was incurred within 910 days of the filing of this case and is secured by a motor vehicle. Therefore it cannot be valued, and the Plan is not feasible. 11 U.S.C. § 1325(a)(6). FN.1.

FN.1. Debtor dismissed the Motion to Value Secured Claim of Lobel Financial on March 23, 2017. Dckt. 29.

The Motion to Value being withdrawn, 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 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.

22. [17-20471](#)-E-13 **DEANNA TORREZ** **MOTION TO VALUE COLLATERAL OF**
PGM-1 **Peter Macaluso** **LOBEL FINANCIAL**
2-23-17 [[14](#)]

Final Ruling: No appearance at the April 4, 2017 hearing is required.

The Motion to Value Secured Claim is dismissed without prejudice.

The Debtor having filed a Notice to Withdraw Motion, which the court construes to be an Ex Parte Motion to Dismiss the pending Motion on March 23, 2017, Dckt. 29; no prejudice to the responding party appearing by the dismissal of the Motion; the Debtor having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the oppositions filed by the Trustee and the Creditor; the Ex Parte Motion is granted, the Debtor's Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Value Secured Claim filed by the Debtor having been presented to the court, the Debtor having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 29, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Value Secured Claim is dismissed without prejudice, and the bankruptcy case shall proceed in this court.

23. [16-25173-E-13](#) **RONALD GRASSI** **MOTION TO CONFIRM PLAN**
PLC-2 **Peter Cianchetta** **2-16-17 [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, Debtor’s Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on February 10, 2017. By the court’s calculation, 53 days’ notice was provided. 42 days’ notice is required.

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.

Ronald Grassi (“Debtor”) seeks confirmation of the Amended Plan because believes he will be able to afford plan payments according to amended Schedules I and J. Dckt. 55. The Amended Plan proposes a monthly payment of \$1,500.00 and does not list Domestic Support Obligations. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

TRUSTEE’S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an Opposition on March 16, 2017. Dckt. 70.

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Schedule I was amended so that Debtor’s Domestic Support Obligations in the amount of \$915.42 were no longer listed. There is no explanation as to why that expense was removed. Schedule J continues to list the \$150.00 per month expenses for the family attorney fees, and it is not clear whether

those issues have been resolved. Debtor also increased the children's tuition and living expenses by \$50.00, and gym expenses by \$60.00 on Schedule J. Debtor's net income is now \$2,505.76. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Trustee, the Plan will complete in seventy-four months due to the amount of debts proposed to be paid in the sixty-month term. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

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 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 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 and Debtor’s Attorney on March 1, 2017. By the court’s calculation, 34 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 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 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 Objection to Confirmation of Plan is sustained.

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that:

- A. Debtor is delinquent in plan payments.
- B. Debtor failed to appear at the First Meeting of Creditors.

The Trustee’s objections are well-taken.

The Trustee asserts that Debtor is \$2,867.00 delinquent in plan payments, which represents one month of the \$2,867.00 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 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. To attempt to confirm a plan while failing to appear and be questioned

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

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

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

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

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee 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.

25. [14-23175-E-13](#) **MELVIN/DEBORAH FRYE** **MOTION TO INCUR DEBT**
ALF-2 Ashley Amerio 3-8-17 [38]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 8, 2017. By the court’s calculation, 27 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 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule

and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----.

The Motion to Incur Debt to purchase real property is granted.

The Motion seeks permission to purchase real property commonly known as 7174 Predial Way, Sacramento, California, which the total purchase price is \$330,560.00, with monthly payments of \$2,040.41 to Vitek Real Estate Industries Group, Inc. dba Vitek Mortgage Group over thirty years with a 4.375% fixed interest rate.

TRUSTEE’S NON-OPPOSITION

David Cusick, the Chapter 13 Trustee, filed a Non-Opposition on March 10, 2017. Dckt. 43.

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 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 Melvin Frye and Deborah Frye (“Debtor”) are authorized to incur debt pursuant to the terms of the agreement, Exhibit 2, Dckt. 41.

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 16, 2017. By the court’s calculation, 47 days’ notice was provided. 42 days’ notice is required.

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 Neher and Paula Neher (“Debtor”) seek confirmation of the Amended Plan to correct the amount of arrears listed against their residence. Dckt. 36. The Amended Plan calls for payments of \$4,690.00, with \$1,800.00 per month paid on arrears. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

TRUSTEE’S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an Opposition on March 16, 2017. Dckt. 46. Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6).

The Trustee believes that the addition of Wells Fargo Home Mtg. to Class 1 is a reference to a line of credit from Claim 4-1. Debtor listed the arrears and arrearage dividend as zero, but the claim lists \$20,279.72 as the amount owed and arrears of \$13,755.00. As proposed, the Plan does not permit the Trustee to make any disbursements to arrearages, but it would result in payments of \$10,000.00 over forty-eight months prior to any loan modification or refinance.

The Trustee is unsure whether Debtor has presented sufficient evidence to support Section 6.01 of the Plan, which calls for a loan modification before the forty-ninth month of the Plan. The Trustee believes that Debtor would qualify for a loan modification, but he notes that without one, the Plan would complete in eighty-five months. That would be in violation of the sixty-month limit established by 11U.S.C. § 1322(d).

Finally, the Trustee notes that Wells Fargo Financial California, Inc. (“Creditor”) has objected previously, and he asks the court to consider any non-filing of an opposition by Creditor as a factor weighing in favor of confirmation. Creditor has filed an Opposition, however.

CREDITOR’S OPPOSITION

Creditor filed an Opposition on March 20, 2017. Dckt. 49. Creditor opposes the Amended Plan in that Section 6.01 calls for a “speculative” loan modification that may not be granted within the plan term. Creditor argues that the Amended Plan is not feasible because it fails to provide adequate means of implementation, calling for a refinancing in the forty-ninth month.

DEBTOR’S RESPONSE TO THE TRUSTEE’S OPPOSITION

Debtor filed a Response to the Trustee’s Opposition on March 23, 2017. Dckt. 51. Debtor argues that the Trustee’s position seems to be that he would have no opposition if Creditor has no opposition. Debtor claims to have addressed Creditor’s concerns and asks the court to find that the Trustee has no true opposition if the court also finds that Debtor has satisfied Creditor’s Opposition.

DEBTOR’S RESPONSE TO CREDITOR’S OPPOSITION

Debtor filed a Response to Creditor’s Opposition on March 23, 2017. Dckt. 52. Debtor argues that the Amended Plan is not speculative because it provides for regular mortgage installments, as well as monthly payment toward the arrears. Debtor argues that courts have approved Chapter 13 plans that propose to seek loan modifications when those plans also provide adequate protection.

Debtor asks the court for a reasonable amount of time to file and set for hearing another amended plan.

RULING

A review of the docket shows that a new plan has not been filed. Therefore, the court addresses the merits of the instant Motion and Amended Plan. While Debtor has presented a counter-argument to Creditor that the Plan actually provides adequate protection payments to keep the proposed loan modification from being speculative, Debtor has failed to address the Trustee’s concerns. Debtor may believe that the Trustee’s Opposition is merely informational, but he has raised a feasibility question about how the Amended Plan treats Creditor’s Class 1 claim. Without an accurate picture of Debtor’s financial reality, the court cannot determine whether the Plan is confirmable.

The court does not concur with Debtor that a 48 month period in which Debtor may, or may not, pursue a loan modification is a “reasonable” period of time. In substance Debtor does the impermissible

– modifies this loan secured only by Debtor’s residence to reduce the loan payments for 48 months. This is not a plan which provides for adequate protection payments for a reasonable period of time for the diligent prosecution of a loan modification application or protect the rights and interests of creditor during such reasonable, diligent prosecution of a loan modification application. Further, it suspends Creditor’s rights to reject the loan modification and pursue its rights for forty-eight months.

The Amended Plan—which has not been withdrawn or superseded—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 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.

27. [15-20080-E-13](#) **JESUS/JESSICA CARDENAS** **MOTION TO MODIFY PLAN**
ALF-3 **Ashley Amerio** **2-21-17 [94]**

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 21, 2017. By the court’s calculation, 42 days’ notice was provided. 35 days’ notice is required.

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.

Jesus Cardenas and Jessica Cardenas (“Debtor”) seek confirmation of the Modified Plan because Debtor Jessica Cardenas’s father developed health issues and is no longer able to provide for Debtor’s childcare expenses, and Debtor’s food expenses increased because their two-year-old daughter eats more food now. Dckt. 96. The Modified Plan increases plan payments in months twenty-five through sixty to \$4,767.00 (up from \$4,535.00), but it reduces the unsecured claim dividend from 1% to 0%. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

TRUSTEE’S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an Opposition on March 16, 2017. Dckt. 103. The Trustee opposes “needlessly complicated additional provisions” that do not comply with 11 U.S.C. § 1325(a)(1) & (3). Debtor filed the Modified Plan during the twenty-fifth month of the Plan, and set it for confirmation for the twenty-seventh month of the Plan. The Trustee notes that Debtor purports to change what the Trustee must pay to certain creditors in months 24–26 (§ 6.03 Ongoing Mortgage Payments), months 25 & 26 (§ 6.04 Class 2 creditors Santander Consumer USA and Carmax), and month 26 (§ 6.05 Class 5 creditors).

The Trustee notes that the Modified Plan “does not simply propose that any payments made and authorized under prior plans remain authorized.” The Trustee believes that the changes are relatively minor, but because of a possibility that significant changes may be introduced without adequate notice in the proposed format, the Trustee objects to the additional provisions, unless any payments made and authorized under prior plans remain authorized and unless no payment to a creditor shall be changed prior to the month the Modified Plan is heard (month twenty-seven).

COURT’S REVIEW OF MOTION TO CONFIRM AND PROPOSED MODIFIED PLAN

The court begins with the grounds stated with particularity in the Motion (Dckt. 94). Fed. R. Bankr. P. 9013. The current confirmed Plan requires monthly payments of \$4,535.00 a month. Debtor reports that childcare expenses have increased \$1,000.00 a month. (Debtor’s father no longer able to provide free childcare services.) Additionally, Debtor’s food expense has increased \$83.00 a month.

Debtor states that Jessica has increased her hours at work, but does not state how much of an increase is expenses. Debtor does direct the court to review Amended Schedule I. The court notes at this point that the new schedules I and J filed are stated to be both amended (which relates all the way back to the commencement of this case) and supplemental (which relates only from the date stated on the supplemental schedule, which date is left blank on the new Schedules I and J filed). Dckt. 92. Having stated that the schedules are both amended and supplemental, they present the court with no credible information as to either income or expenses.

On the amended/supplemental Schedule J Debtor lists three adult children as dependents, ages 19 to 25. No income is listed for these adult “dependents.”

Amended/Supplemental I states that Debtor had since the commencement of this case/had since some unstated date, gross monthly income of \$8,854.18. Dckt. 92. Original Schedule I lists gross income of \$7,971.41. Dckt. 1.

Debtor does not explain why there is an increase in monthly plan payments, but a decrease in the minimum percentage to be paid creditors holding general unsecured claims (reducing it to 0.00%). It appears that the secured and priority claims to be claimed through the Modified Plan are less than stated in the current confirmed Plan.

Detailed additional provisions have been included in the proposed Modified Plan specifying payments to be made to creditors holding secured and priority claims. It is not clear how Debtor computes these amounts stated to what is to have been paid to these creditors and whether it corresponds to the currently confirmed Plan in this case.

For the Class 1 secured claim, the currently confirmed plan requires a monthly arrearage payment of \$233.33 and currently monthly mortgage payments of \$3,247.00. Multiplying each by 26 months, the total payments would be \$6,066.58 for arrearage payments and \$84,422.00 for the post-petition current monthly mortgage payments, for total Class 1 claim payments of \$90,488.58. The numbers stated in the additional provisions of the proposed Modify Plan are not consistent with this computation.

The additional provisions also in some parts discuss payments to be made months 1 through 27, and in other parts months 1 through 23, and then in other parts months 1 through 24.

The court agrees with the Trustee that the confusion created by how the Additional Provisions is stated, and the lack of any evidence providing an explanation of what has been actually paid and how that is computed renders this Plan not confirmable.

The Motion is denied. The proposed Modified Plan does not comply with 11 U.S.C. §§ 1329, 1325, and 1322.

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 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.

28. [17-20681](#)-E-13 **KEVIN/ELEANOR MOONEY**
DPC-1 **Mikalah Liviakis**

**OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK**
3-7-17 [18]

Final Ruling: No appearance at the April 4, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor’s Attorney on March 7, 2017. 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 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 defaults of the non-responding parties in interest are entered.

The Objection to Confirmation is overruled as moot.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Subsequent to the filing of this Objection, Kevin Mooney and Eleanor Mooney (“Debtor”) filed a First Amended Plan and corresponding Motion to Confirm on March 22, 2017. Dckts 23 & 26. Filing a new plan is a de facto withdrawal of the pending plan. The Objection to Confirmation is overruled as moot, 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 Confirmation filed by 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 is overruled as moot, with the proposed Chapter 13 Plan not being confirmed, Debtor having filed an amended plan set for a future hearing.

29. [17-20681](#)-E-13 **KEVIN/ELEANOR MOONEY**
PPR-1 **Mikalah Liviakis**

**OBJECTION TO CONFIRMATION OF
PLAN BY HSBC BANK USA, N.A.**
2-21-17 [[14](#)]

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

Below is the court’s tentative ruling, rendered on the assumption that there will be no opposition to the 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, and Office of the United States Trustee on February 21, 2017. By the court’s calculation, 42 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 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 defaults of the non-responding parties in interest are entered.

The Objection to Confirmation is overruled as moot.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Subsequent to the filing of this Objection, Kevin Mooney and Eleanor Mooney (“Debtor”) filed a First Amended Plan and corresponding Motion to Confirm on March 22, 2017. Dckts 23 & 26. Filing a new plan is a de facto withdrawal of the pending plan. The Objection to Confirmation is overruled as moot, and the plan is not confirmed.

The Motion filed by Natalia Jeffs (“Debtor”) to value the secured claim of Celtic Bank Serviced by On Deck Capital, Inc. (“Creditor”) is accompanied by Debtor’s declaration. Debtor is the owner of a accounts receivable, office equipment, and office supplies (“Property”). Debtor seeks to value the Property at a replacement value of \$2,107.00 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 NON-OPPOSITION

David Cusick, the Chapter 13 Trustee, filed a Non-Opposition on March 17, 2017. Dckt. 22.

DISCUSSION

The lien on the Property secures a non-purchase-money loan incurred on September 6, 2016, to secure a debt owed to Creditor with a balance of approximately \$5,143.00. Therefore, Creditor’s claim secured by a lien against the Property is under-collateralized. Creditor’s secured claim is determined to be in the amount of \$2,107.00, 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 Secured Claim filed by Natalia Jeffs (“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 Celtic Bank Serviced by On Deck Capital, Inc. (“Creditor”) secured by an asset described as accounts receivable, office equipment, and office supplies (“Property”) is determined to be a secured claim in the amount of \$2,107.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$2,107.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

31. [17-20997](#)-E-13
GW-2

NATALIA JEFFS
Gerald White

MOTION TO VALUE COLLATERAL OF
CELTIC BANK
3-6-17 [16]

Final Ruling: No appearance at the April 4, 2017 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, Creditor, and Office of the United States Trustee on March 6, 2017. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

The Motion to Value 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 Secured Claim of Celtic Bank, aka Kabbage (“Creditor”) is granted, and Creditor’s secured claim is determined to have a value of \$0.00.

The Motion filed by Natalia Jeffs (“Debtor”) to value the secured claim of Celtic Bank, aka Kabbage (“Creditor”) is accompanied by Debtor’s declaration. Debtor is the owner of accounts receivable, office equipment, and office supplies (“Property”). Debtor seeks to value the Property at a replacement value of \$2,107.00 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 NON-OPPOSITION

David Cusick, the Chapter 13 Trustee, filed a Non-Opposition on March 17, 2017. Dckt. 24.

DISCUSSION

The senior in priority lien secures a claim with a balance of approximately \$5,143.00. Creditor’s lien on the Property secures a non-purchase-money loan incurred on October 13, 2016, to secure a debt owed to Creditor with a balance of approximately \$14,750.00. Therefore, Creditor’s claim secured by a

junior lien against the Property is completely under-collateralized. Creditor's secured claim is determined to be in the amount of \$0.00, and no payments shall be made on the secured claim under the terms of any confirmed Plan. *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 Secured Claim filed by Natalia Jeffs ("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 Celtic Bank, aka Kabbage ("Creditor") secured by a junior lien on assets described as accounts receivable, office equipment, and office supplies ("Property") is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$2,107.00 and is encumbered by a senior lien securing a claim that exceeds the value of the Property that is subject to Creditor's lien.

32. [17-21624-E-13](#) **ELIEZER/EVANGELINE** **MOTION TO EXTEND AUTOMATIC**
JMC-1 **DELMENDO** **STAY O.S.T.**
 Joseph Canning **3-24-17 [12]**

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

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

Local Rule 9014-1(f)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on March 24, 2017. By the court’s calculation, 11 days’ notice was provided.

The Motion to Extend the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). The Debtor, creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing -----
-----.

The Motion to Extend the Automatic Stay is granted.

Eliezer Delmendo and Evangeline Delmendo (“Debtor”) seek to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond thirty days in this case. This is the Debtor’s second bankruptcy petition pending in the past year. The Debtor’s prior bankruptcy case (No. 17-20465) was dismissed on March 1, 2017, after Debtor failed to file all required documents and a proposed Chapter 13 plan by a deadline. *See* Order, Bankr. E.D. Cal. No. 17-20465, Dckt. 48, March 1, 2017. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the 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 filed documents after the deadline the court had set. The Motion states that, in compliance with a court order, Debtor filed the required documents (schedules, plan, rights and responsibilities, and Chapter 13 statement of current monthly income) on February 22, 2017—the deadline. A motion to confirm the plan was not filed until February 28, 2017, however, and so, the court dismissed the case.

Debtor testifies that the plan and schedules were filed on time and that the first plan payment was made in the prior bankruptcy case. Dckt. 14. Only the Motion addresses why a motion to confirm plan was not filed timely by stating that “dismissal [of the case] was a result of inadvertently filing the motion to confirm [Debtor’s] Chapter 13 plan beyond the deadline set by the Court.” Dckt. 12. No testimony is provided as to the asserted error as to why the prior case was dismissed.

The proposed Chapter 13 Plan in this case provides for monthly plan payments of \$1,700.00 a month for 60 months, which provides for \$102,000.00. In addition to providing for Class 2 secured claims and Class 5 priority claims, the proposed Plan provides for no less than an 80% dividend for Class 7 general unsecured claims.

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.

Though the evidence provided is spotty, in light of the proposed plan and a review of the docket for the prior case, the court grants the Motion. While the prior case was dismissed, the explanation is sufficient under these circumstances are sufficient to rebut the presumption of bad faith.

The Motion is 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 Extend the Automatic Stay filed by 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 Motion is granted and the court extends the automatic stay as to Debtor pursuant to 11 U.S.C. § 362(c)(3)(B) as to all parties and for all purposes until terminated by operation of law or further order of this court.