UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

April 16, 2019 at 3:00 p.m.

1.	**18-27801-E-13** **DPC-1**	**ROBERT SCOTT** **Peter Macaluso**	**CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **2-5-19 [23]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on February 5, 2019. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

basis that:

A. Debtor, Robert Scott ("Debtor"), may not be able to make payments. Debtor lists $1,200 in income from unemployment, $192 from welfare, and $750 from Debtor's significant other. Debtor also admitted to being an agricultural laborer for marijuana growers. Debtor has not provided a declaration of his significant other to demonstrate commitment to contributions, has not provided evidence of prior unemployment income, and has not provided evidence of income from agricultural work.

B. Debtor's agricultural income is derived from farming marijuana, which is currently illegal under federal law and was not previously disclosed to the court.

DEBTOR'S RESPONSE

Debtor filed a Response to the Objection on February 26, 2019. Dckt. 29. Debtor states Schedule I has been corrected to reflect an increase in unemployment income. Debtor states further he has a pending job interview and will amended Schedules if he obtains that job; he will obtain a declaration from his significant other; and he is not and will not perform agricultural work discussed by the Trustee.

In support of the Response, Debtor concurrently filed his Declaration. Dckt. 30. The Declaration attests to statements in the Response, and adds that Debtor will no longer need significant other contributions if he obtains new employment, that Debtor's unemployment was increased by $450 (now totaling $1,800 monthly), that Debtor's interview is for a position as a full-time substitute teacher.

DEBTOR'S AMENDED SCHEDULE I

On February 26, 2019 Debtor filed an Amended Schedule I. Dckt. 32. The Amended Schedule I reflects an increase in unemployment income from $1,200 to $1,800, as well as a decrease in significant other contribution from $750 to $150.

MARCH 5, 2019 HEARING

At the March 5, 2019 hearing the court noted that while Debtor amended his Schedule I, the Trustee's concerns (that no substantiating documentation was offered and that Debtor did not provide a declaration of his significant other to demonstrate commitment to contributions, or evidence of prior or current unemployment income) were not addressed. Civil Minutes, Dckt. 35. Nothing was provided upon which the Trustee or the court could determine the likelihood that Debtor's income is stable and Debtor offered no explanation as to how he has been able to increase his unemployment benefits.

With the changing income numbers, the court was prompted to look at Debtor's Schedule J. Dckt. 16 at 18-19. The financial information, provided under penalty of perjury, includes the following information:

1. Debtor's maintenance and repair expenses on the property for which the Class 1 Secured Claim is paid monthly are.....$0.00

2. Debtor's monthly electricity, heat and natural gas expenses are exactly.....$100

3. Debtor's monthly water, sewer, and garbage expenses are exactly.....$100

4. Debtor's monthly expense for food and housekeeping supplies are.....$110

   Allowing $50 a month for housekeeping supplies, wipes, soap, paper towels and the like, there is $60 a month for food, which for a 30 day month, with 3 meals a day, is$0.66 per meal.

5. Debtor's monthly clothing expense is.....$ 10

6. Debtor's monthly personal care products and services expenses are.....$ 10

7. Debtor's monthly medical and dental expenses are.....$ 2

8. Debtor's monthly transportation expenses (registration, gas, maintenance) are.....$100

   On Schedule A/B Debtor lists owning a 1996 Chevy Impala to which these expenses appear to relate. Dckt. 16 at 4.

Debtor tells the court, under penalty of perjury, that his expenses, other than his mortgage/taxes/ insurance, are only $592 a month.

In light of the foregoing discussion, the court continued the hearing on the Objection to Confirmation of Plan in order to allow Debtor to further amend his Schedule I. Dckt. 36.

DISCUSSION

Debtor has not made any further amendments to his schedule I since the prior hearing. As stated at the prior hearing, no further documentation has been provided for the court to determine the stability of Debtor's income or to explain why Debtor's unemployment benefits increased.

Debtor has not shown the plan is feasible. That is cause to sustain the Objection. 11 U.S.C. § 1325(a)(6).

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

and the Plan is not confirmed.

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

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

2.	**18-27801-E-13** **RDW-1**	**ROBERT SCOTT** **Peter Macaluso**	**OBJECTION TO CONFIRMATION OF PLAN BY PATELCO CREDIT UNION** **3-22-19 [42]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Barbara Ozobiani (identified as "Borrower"), Chapter 13 Trustee, and Office of the United States Trustee on March 22, 2019. By the court's calculation, 25 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

Creditor, Patelco Credit Union ("Creditor") holds a claim secured against Debtor's real property. Debtor is not the borrower on the notes, but has included the Property and is the son of the deceased borrower and trustee of her estate. The pre-petition arrears owed to Creditor on its secured senior lien is $9,253.80 and $1,141.44 on its junior lien.

Creditor's claim opposes confirmation of the Plan on the basis that:

A. Debtor's proposed plan provides for First American Title Insurance

Company as a creditor secured by the Property–this creditor is actually Creditor.

B. Debtor listed arrears in the amount of $8,000.00 where the pre-petition arrears owed are $9,253.80.

C. Creditor also holds a claim secured by a junior lien on the Property with pre-petition arrears of $1,141.44. Debtor failed to list this claim.

C. Debtor's schedules show disposable income of $1,550.00. Confirmation of the plan is not feasible with Debtor's income and expenses in light of the fact that Creditor's claim was incorrectly listed.

D. Debtor is relying on $750.00 per month in contributions from his significant other in order to fund the proposed plan payments. However, nothing has been provided to show the legitimacy and regularity of the contributions.

DISCUSSION

Creditor's objections are well-taken.

Creditor asserts claims of $31,349.38 and $181,025.60 in this case. Proof of Claim, Nos. 4, 5. Debtor's Schedule D does not list Creditor's claim, only identifying a claim of First American Title Insurance Company. Dckt. 16.

The plan proposes to pay First American Title Insurance Company as a Class 1. However, even assuming Debtor meant to provide for the claim of Creditor, the amounts listed in the proposed plan are not sufficient to provide for the full claim or cure the arrearages. Plan, Dckt. 17.

Creditor alleges that therefore the Plan is not feasible and violates 11 U.S.C. § 1322(b)(2) because it contains no provision for payment of Creditor's matured obligation, which is secured by Debtor's residence. *See* 11 U.S.C. § 1325(a)(6).

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

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

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

A. Provide a treatment that the debtor and creditor agree to (11 U.S.C. § 1325(a)(5)(A)),

B. Provide for payment in full of the entire claim if the claim is modified or will mature by its terms during the term of the Plan (11 U.S.C. § 1325(a)(5)(B)), or

C. Surrender the collateral for the claim to the creditor (11 U.S.C. § 1325(a)(5)(C)).

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

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

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

Further, the Plan does not propose to cure the arrearages on Creditor's claims. Plan, Dckt. 17. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearages.

Creditor also addresses a "$750.00" contribution from Debtor's significant other. This contribution is actually only $150.00. Amended Schedule I, Dckt. 32. Additionally, the Declaration of Kamilah Crawford has been filed in support of this modest contribution. Declaration, ¶ 3, Dckt. 33.

As discussed above, the plan does not provide for the secured claim of Creditor. Therefore, 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 Patelco ("Creditor")

holding two secured claims having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

3. 19-21660-E-13 DAVID EMBERLIN
FF-1

MOTION TO EXTEND AUTOMATIC STAY
O.S.T.
3-22-19 [14]

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the 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 Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 22, 2019. By the court's calculation, 25 days' notice was provided. The court set the hearing for April 16, 2019. Dckt. 21.

The Motion to Extend the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing ----------.

The Motion to Extend the Automatic Stay is granted.

David Charles Emberlin ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 18-23153) was

dismissed on October 10, 2018, after Debtor failed to obtain confirmation of an Amended Plan. *See* Order, Bankr. E.D. Cal. No. 18-23153, Dckt. 26, October 10, 2018. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because of missed plan payments, due to a pending divorce, custody battle, and long term medical conditions. Declaration ¶ 3, Dckt. 16. Debtor states further that the financial burdens of the divorce have been cleared up, Debtor's sister now contributing $500.00 as rent after moving in, and Debtor is singing up for automatic bill pay. *Id.*, ¶ 4.

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.

Here, Debtor states the case was dismissed after Debtor fell behind in payments. Declaration ¶ 3, Dckt. 16. This statement is not entirely accurate.

In the prior case, the Trustee filed an objection to confirmation of Debtor's plan. Trustee's grounds included that Debtor was delinquent in payments, and because Debtor could not explain

discrepancies between the gross income listed on his Schedules and those in the pay advices provided to the Trustee. Civil Minutes, Bankr. E.D. Cal. No. 18-23153, Dckt. 23. Subsequently, the court issued an Order requiring Debtor to confirm an amended plan within 60 days, and dismissed the case when Debtor failed to meet that requirement. Bankr. E.D. Cal. No. 18-23153, Dckts. 26.

In reviewing the Schedule filed in the prior case (Schedule I, Bankr. E.D. Cal. No. 18-23153, Dckt. 1) with the present case, Debtor has increased the stated income from $7,349.21 to $8,502.91. Schedule I, Dckt. 13.

Debtor has presented evidence to cure both grounds that formed the Trustee's objection to confirmation in the prior case, which resulted in dismissal of the case. Thus, the presumption of bad faith has been rebutted.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Extend the Automatic Stay filed by David Charles Emberlin ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes and parties, unless terminated by operation of law or further order of this court.

4. **19-21861-E-13 MC-1** **YALONDA DESMANGLES** **MOTION TO EXTEND AUTOMATIC STAY**
4-1-19 [11]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on April 1, 2019. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

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

The Motion to Extend the Automatic Stay is granted.

Yalonda Lott Desmangles ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 18-41102-WJL13) was dismissed on January 18, 2019, after Debtor fell delinquent in plan payments. *See* Order, Bankr. N.D. Cal. No. 18-41102-WJL13, Dckt. 61. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because Debtor's apartment became infested with bed bugs, forcing her to incur great expenses associated with the move. Declaration ¶¶ 3-6, Dckt. 13.

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

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

A. Why was the previous plan filed?

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

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

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

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Extend the Automatic Stay filed by Yalonda Lott Desmangles ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and the automatic stay is

extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes and parties, unless terminated by operation of law or further order of this court.

5. **18-27372-E-13 MEV-2** **DUANE OTT** **March Voisenat** **MOTION TO CONFIRM PLAN 2-27-19 [36]**

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 27, 2019. By the court's calculation, 48 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied.

Duane Alexander Ott ("Debtor") seeks confirmation of the Amended Plan which would constitute the first confirmed plan. The Amended Plan provides for payments of $2,912 for 60 months, and a 100 percent dividend to unsecured claims totaling $10,304.90. Amended Plan, Dckt. 31. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

Chapter 13 Trustee, David Cusick ("the Chapter 13 Trustee") filed an Opposition on March 19,

2019. Dckt. 41. Trustee opposes confirmation on the basis that Debtor is delinquent $6,016.62 in payments to the Trustee, and therefore the plan cannot be confirmed pursuant to 11 U.S.C. § 1325(a)(2).

DISCUSSION

Debtor is delinquent $6,016.62 in payments to the Trustee that are required to be paid prior to confirmation. Dckt. 42. Therefore the plan cannot be confirmed pursuant to 11 U.S.C. § 1325(a)(2).

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 Duane Alexander Ott ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Confirm the Amended Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

6. 19-21483-E-13 FF-1 — JUDITH GEE — MOTION TO EXTEND AUTOMATIC STAY — 3-22-19 [13]

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 March 22, 2019. By the court's calculation, 25 days' notice was provided. 28 days' notice is required.

The Motion to Extend the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written

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

The Motion to Extend the Automatic Stay is granted.

Judith Ann Gee ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 19-20065) was dismissed on January 28, 2019, after Debtor for failure to timely file documents. *See* Order, Bankr. E.D. Cal. No. 19-20065, Dckt. 13, January 28, 2019. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because her husband became ill and passed away, precluding her from moving forward with the bankruptcy case. Declaration ¶ 3, Dckt. 15.

CREDITOR'S OPPOSITION

Creditor Deutsche Bank National Trust Company, as Trustee for Soundview Home Loan Trust 2006-3, Asset-Backed Certificates, Series 2006-3 ("Creditor"), filed an Opposition on April 1, 2019. Dckt. 27.

Creditor opposes the Motion on the following grounds:

1. Debtor lists on her Schedule I income received from her daughter, but does not provide evidence supporting the contribution.

2. The Motion is set for hearing April 16, 2019, more than 30 days after the filing of the case. Therefore, the hearing will not be completed and the stay not extended before the expiration of the stay.

INTERIM ORDER EXTENDING STAY

On April 9, 2019, before the expiration of the 30 day stay, the court issued an Interim Order extending the stay (based on an implicit *ex parte* request) through and including April 23, 2019, in order to allow the Motion to be considered on the merits at the noticed hearing date. Order, Dckt. 33.

DEBTOR'S SUPPLEMENTAL DECLARATION

On April 5, 2019, Debtor filed the Declaration of Tracie Tyler. Dckt. 29. Tyler identifies herself

as Debtor's daughter, testifies she is employed as a Medical Coder at Sutter Health Medical Center with an annual gross salary is approximately $52,000.00, an further testifies she is contributing $1,450.00 a month to Debtor's household expenses. *Id*.

DISCUSSION

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

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

A. Why was the previous plan filed?

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

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

Debtor has sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay. With the stay extended by Interim Order, the hearing will be completed before the stay expires. Furthermore, Debtor has provided evidence supporting her increased income from her daughter's contribution. Dckt. 29.

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

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

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

hearing.

The Motion to Extend the Automatic Stay filed by Judith Ann Gee ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

7. **14-21002-E-13** **DEAN/JAMIELYNNE HARRISON** **MOTION TO INCUR DEBT**
MET-2 **Mary Ellen Terranella** **4-1-19 [30]**

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

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 April 1, 2019. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

The Motion to Incur Debt was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. 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 is granted.

Dean Harrison and Jamielynne Harrison ("Debtor") seek permission to refinance real property commonly known as 6212 Vanden Road, Vacaville, California, with a total price of $286,935.00; monthly payments of $2,238.32 (inclusive of insurance and taxes); and a 30 year maturity term with a 5.125 percent fixed interest rate.

The proposed refinance would reduce the Debtor's monthly mortgage payment by $198.00 monthly, and provide additional funds for a roof replacement required by their insurance provider.

Additionally, Debtor requests the 14-day period pursuant to Federal Rule of Bankruptcy Procedure "6004(g)" be waived unless specific objection to the waiver is filed.

TRUSTEE'S NON-OPPOSITION

On April 8, 2019, David Cusick, the Chapter 13 Trustee ("Trustee") filed a Non-Opposition to Debtor's Motion to Obtain Credit, Dckt. 37. Trustee notes the plan is complete.

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, which would reduce the monthly payment amount and provide funds for necessary repairs, is reasonable. There being no opposition from any party in interest and the terms being reasonable, the Motion is granted.

Waiver of Fourteen Day Stay

Debtor asks for relief from the 14 day stay pursuant to "6004(g)." This appears to be typographical error, and the court believes the reference is to Federal Rule of Bankruptcy Procedure 6004(h) which provides that an order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise. [FN. 1.]

FN. 1. Federal Rule of Bankruptcy Procedure 6004(g) relates to " A motion for authority to sell or lease personally identifiable information under §363(b)(1)(B) shall include a request for an order directing the United States trustee to appoint a consumer privacy ombudsman under §332." Fed. R. Bankr. P. 6004(g)(1). That is not the subject matter of the Motion now before the court.

The requested relief is to obtain credit. Possibly Movant concluded that the rule applies since the property was being "used" to secure the new loan. However, the Supreme Court has provided a Rule of Bankruptcy Procedure that specifically applies to obtaining credit - Federal Rule of Bankruptcy Procedure 4001:

(c) Obtaining Credit.

(1) Motion; Service.

(A) Motion. A motion for authority to obtain credit shall be made in accordance

with Rule 9014 and shall be accompanied by a copy of the credit agreement and a proposed form of order.

(B) Contents. The motion shall consist of or (if the motion is more than five pages in length) begin with a concise statement of the relief requested, not to exceed five pages, that lists or summarizes, and sets out the location within the relevant documents of, all material provisions of the proposed credit agreement and form of order, including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions. If the proposed credit agreement or form of order includes any of the provisions listed below, the concise statement shall also: briefly list or summarize each one; identify its specific location in the proposed agreement and form of order; and identify any such provision that is proposed to remain in effect if interim approval is granted, but final relief is denied, as provided under Rule 4001(c)(2). In addition, the motion shall describe the nature and extent of each provision listed below:

(i) a grant of priority or a lien on property of the estate under §364(c) or (d);

(ii) the providing of adequate protection or priority for a claim that arose before the commencement of the case, including the granting of a lien on property of the estate to secure the claim, or the use of property of the estate or credit obtained under §364 to make cash payments on account of the claim;

(iii) a determination of the validity, enforceability, priority, or amount of a claim that arose before the commencement of the case, or of any lien securing the claim;

(iv) a waiver or modification of Code provisions or applicable rules relating to the automatic stay;

(v) a waiver or modification of any entity's authority or right to file a plan, seek an extension of time in which the debtor has the exclusive right to file a plan, request the use of cash collateral under §363(c), or request authority to obtain credit under §364;

(vi) the establishment of deadlines for filing a plan of reorganization, for approval of a disclosure statement, for a hearing on confirmation, or for entry of a confirmation order;

(vii) a waiver or modification of the applicability of nonbankruptcy law relating to the perfection of a lien on property of the estate, or on the foreclosure or other enforcement of the lien;

(viii) a release, waiver, or limitation on any claim or other cause of action belonging to the estate or the trustee, including any modification of the statute of limitations or other deadline to commence an action;

(ix) the indemnification of any entity;

(x) a release, waiver, or limitation of any right under §506(c); or

(xi) the granting of a lien on any claim or cause of action arising under §§544, 1 545, 547, 548, 549, 553(b), 723(a), or 724(a).

(C) Service. The motion shall be served on: (1) any committee elected under §705 or appointed under §1102 of the Code, or its authorized agent, or, if the case is a chapter 9 municipality case or a chapter 11 reorganization case and no committee of unsecured creditors has been appointed under §1102, on the creditors included on the list filed under Rule 1007(d); and (2) on any other entity that the court directs.

(2) Hearing. The court may commence a final hearing on a motion for authority to obtain credit no earlier than 14 days after service of the motion. If the motion so requests, the court may conduct a hearing before such 14-day period expires, but the court may authorize the obtaining of credit only to the extent necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

(3) Notice. Notice of hearing pursuant to this subdivision shall be given to the parties on whom service of the motion is required by paragraph (1) of this subdivision and to such other entities as the court may direct.

Though in Federal Rule of Bankruptcy Procedure 4001(a)(3) the Supreme Court provides for a fourteen day stay of an order granting relief from the stay, no such delay is imposed with respect to the portion of the Rule relating to obtaining credit.

The grounds stated with particularity (Fed. R. Bank. P. 9013) in the Motion provided by Debtor consists of:

> "Debtors request the 14-day period pursuant to Bankruptcy Rule 6004(g) be waived unless specific objection to the waiver is filed."

Motion, p. 2:18.5-19.5; Dckt. 30.

This pleading appears to manifest a litigation strategy of Debtor that she can ask/demand relief, is not required to show any grounds, and the onus is placed on opposing parties (and the court) to divine the grounds, state the grounds for Movant, and then carry the burden of prosecuting that demand for relief from the court.

No grounds have been shown for granting the additional relief and such request is denied.[FN. 2.]

FN. 2. This request/demand for the relief and the stating of the grounds being "well, so long as nobody objects, just give me what I ask/demand" from an attorney who regularly appears in this court causes great concern. It may well indicate other lapses in complying with the applicable law and Supreme Court imposed Rules. As the court has seen recently in some other attorneys, it may manifest a belief that attorneys can overrule the Supreme Court and set aside the holding in *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260 (2010). Though the court was tempted to deny the Motion without prejudice and have counsel repeat the process, it appears that Debtor is in dire need of the credit, and such delay could possibly result in Debtor incurring what would have been otherwise avoidable damages. Counsel should not bank of the court giving a pass on such gross pleading errors and ignoring the responsibilities of a moving party in seeking relief.

The court acknowledges that this counsel, in appearing before this court is very attentive to her cases, the Rules, and the law. However, the court has also seen an uptick in the number of attorneys– even the good, attentive attorney such as this counsel–eschewing their responsibilities and backsliding to what some would phrase as a "1980s hometown, good ol' boys, it's not really federal court and the bankruptcy "judge" will just slide me whatever I ask for" practice. For attorneys who choose to so backslide, the "payoff" will not only having motions denied (and having to deal with the professional responsibility that goes with clients suffering losses due to such deficient practice), but corrective sanctions from the bankruptcy court and possible punitive sanctions imposed by the Article III Chief District Court Judge (or designee Article III District Court Judge) for this District.

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 Dean Harrison and Jamielynne Harrison ("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 Dean Harrison and Jamielynne Harrison are authorized to incur debt pursuant to the terms of the agreement, Exhibit A, Dckt. 33.
>
> No further or other relief is granted by the court pursuant to the Motion.

8. **19-20912-E-13 CAS-1** | **MARK/MARCIA CLARK** **Peter Macaluso** | **OBJECTION TO CONFIRMATION OF PLAN BY CAPITAL ONE AUTO FINANCE** **3-27-19 [17]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on March 27, 2019. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

Capital One Auto Finance, a division of Capital One, N.A. ("Creditor") holding a secured claim objects to confirmation of Debtor's plan on the basis it relies on the valuation of its collateral, a vehicle. However, no such motion to value has been filed.

Creditor's objection is well-taken.

Creditor asserts a claim of $22,334.19 in this case. Debtor's Schedule D estimates the amount of Creditor's claim as $22,795.00, but further indicates that the value of collateral that supports this claim is $16,000.00 and the unsecured portion is $6,795.00. Dckt. 1.

However, Debtor's asserted valuation requires a motion to value the collateral. Where the plan is dependent on a motion to value collateral, and no such motion has been filed, the plan is not feasible. 11 U.S.C. § 1325(a)(6).

Belated Filing of Motion to Value

The present Motion to Confirm was filed on February 15, 2019. Dckt. 2. On March 27, 2019, Creditor was put to the cost and expense of filing this Objection, Debtor having taken no action in the forty (40) days since the February 15, 2019 filing of this case to file the required motion to value.

On April 12, 2019 – fifty-six (56) days after the filing of the bankruptcy case – Debtor filed a two page motion to value. Dckt. 24. It appears that this was done only because Creditor "caught" Debtor in trying to prosecute a Plan without obtaining the required claim valuation.

The burden of timely filing such a Motion for the confirmation of Debtor's plan rested on Debtor. While Creditor has the power to object, without such an order Debtor's Plan is unconfirmable. Notwithstanding such legal defect, it appears that Debtor's litigation strategy is one to try and get such a plan confirmed without obtaining the necessary relief and advance a "well the plan provides" argument that the Supreme Court chastised the bankruptcy judge in *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260 (2010).

The court sees no good faith reason for the failure of Debtor to timely and diligently prosecute the necessary motion to value. Having chosen to not prosecute such motion, the Debtor can file a motion to confirm a plan consistent with the relief obtained on the motion to value. [FN. 1]

FN. 1. The court acknowledges that this counsel, in appearing before this court is very attentive to his cases, the Rules, and the law. However, the court has also seen an uptick in the number of attorneys–even the good, attentive attorney such as this counsel–eschewing their responsibilities and backsliding to what some would phrase as a "1980's hometown, good ol' boys, it's not really federal court and the bankruptcy "judge" will just slide me whatever I ask for" practice. For attorneys who choose to so backslide, the "payoff" will not only having motions denied (and having to deal with the professional responsibility that goes with clients suffering losses due to such deficient practice), but corrective sanctions from the bankruptcy court and possible punitive sanctions imposed by the Article III Chief District Court Judge (or designee Article III District Court Judge) for this District.

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 Capital One Auto Finance,

a division of Capital One, N.A. ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

9.	**19-20614-E-13** **DPC-1**	**LUIS TORRES MORAN** **Dale Orthner**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **3-19-19 [19]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on March 19, 2019. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

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

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

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

A. The Debtor, Luis Enrique Torres Moran's ("Debtor"), proposed plan provides for arrearages of $7,000.00 to the claim of U.S. Bank, where the Proof of Claim indicates arrearages totaling $11,132.73.

B. Debtor lists Loan Mart Class 2(A) of the plan with a claim of $2,600.00. However, Proof of Claim 2 states the secured amount owed is $3,063.97.

C. Debtor admitted at the Meeting of Creditors he received $2,300.00 in tax refunds.

DEBTOR'S OPPOSITION

("Debtor") filed an Opposition to Trustee's Objection to Confirmation on March 25, 2019, Dckt. 25. Debtor agrees with the Creditor's grounds for objection, and requests the plan payment be increased to $1,935.00 in the language of the order confirming the plan.

Supporting the request for the increase, Debtor filed a Amended Schedules A/B and I. Dckt. 24. The Amended Schedule A/B lists $2,448.00 in tax refunds. The Amended Schedule I also reflects an extra contribution from Debtor's father in the amount of $130.00 monthly, which Debtor states on Schedule I was mentioned at the 341 Meeting.

DISCUSSION

Debtor has proposed addressing Trustee's grounds for objection by increasing the plan payment to $1,935.00 and listing tax returns on Debtor's Amended Schedules. Debtor has filed an Amended Schedule I to demonstrate Debtor's ability to make the increased payments.

At the hearing, xxxxxxxxxxxxxx.

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

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

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

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

~~**IT IS ORDERED** that the Objection is overruled, and Luis Enrique Torres Moran's ("Debtor") Chapter 13 Plan filed on February 1, 2019, 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.~~

10. **19-20614-E-13** **LUIS TORRES MORAN**
Dale Orthner

OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK, N.A.
3-13-19 [16]

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on March 13, 2019 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 Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing ----------.

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

U.S. Bank National Association ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that Luis Enrique Torres Moran's ("Debtor") plan provides for arrearages of only $7,000.00 for Creditor's claim where $11,132.73 are owing.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on March 25, 2019. Dckt. 27. Debtor agrees with the Creditor's grounds for objection, and requests the plan payment be increased to $1,935.00 in the language of the order confirming the plan.

Supporting th request for the increase, Debtor filed a Amended Schedules A/B and I. Dckt.

24. The Amended Schedule A/B lists $2,448.00 in tax refunds. The Amended Schedule I also reflects an extra contribution from Debtor's father in the amount of $130.00 monthly, which Debtor states on Schedule I was mentioned at the 341 Meeting.

DISCUSSION

Debtor has proposed addressing Creditor's grounds for objection by increasing the plan payment to $1,935.00. Debtor has filed an Amended Schedule I to demonstrate Debtor's ability to make the increased payments.

At the hearing, xxxxxxxxxxxxxx.

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

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

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

~~The Objection to the Chapter 13 Plan filed by U.S. Bank National Association ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~**IT IS ORDERED** that the Objection is overruled, and Luis Enrique Torres Moran's ("Debtor") Chapter 13 Plan filed on February 1, 2019, 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.~~

11. **19-20923-E-13 RPZ-1** **CHRISTINA GHASSEMI** **Mikalah Liviakis** **OBJECTION TO CONFIRMATION OF PLAN BY BANK OF AMERICA, N.A. 3-27-19 [15]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on March 27, 2019. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

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

Bank of America, N.A. ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that Christina Marie Ghassemi's ("Debtor") plan fails to provide for the full value of Creditor's claim and does not promptly cure Creditor's pre-petition arrears as required pursuant to 1322(b)(5).

Creditor states it is still in the process of filing a proof of claim, but estimates that its total claim is approximately $27,799.18, the total pre-petition arrears are $776.23, and the monthly ongoing post-petition payment is $786.45.

Since filing the Motion, Creditor has filed Proof of Claim, No. 3 which attests to the same values.

DISCUSSION

Creditor argues Debtor's plan does not provide for its claim in full, curing arrearages owing at the time the petition was filed. The proposed Plan has Debtor funding it with only $395 for the first forty-five (45) months and then jumping up to $1,195 for the final fifteen months. Dckt. 2 at 7. The Additional Provisions also include the following statement about the Bank of America, N.A. secured claim:

> This Section includes the secured mortgage claim of Bank of America in the real property commonly known as 6129 Pinecreek Way Citrus Heights, CA 95621,Sacramento County, with a monthly payment of $765, paid directly by Debtor, and is not in default, and not modified by this plan. This claim shall be paid by Debtor or a third person whether or not a proof of claim is filed or the plan is confirmed.

Id. at 8. This statement, and Debtor's intent to treat Creditor as a Class 4 claim (though not listed as such), is clearly at odds with Creditor's Proof of Claim stating an arrearage of $776.23 is the amount necessary to cure any default as of the date of the petition.

The Proof of Claim is supported by a mortgage Proof of Claim Attachment detailing the transaction history for the claim. The Attachment indicates Debtor fell delinquent twice, missing a payment in November 2013, March 2014, and June 2014. However, those delinquencies were cured in February 2014, April 2014, and July 2014, respectively.

The payment made by Debtor was for $765.53, which was the amount due for the contractual due date of February 1, 2019. The next contractual due date was March 1, 2019.

Debtor filed this case on February 15, 2019. Dckt. 1. Thus, it is unclear where the numbers for the amount necessary to cure any default as of the date of the petition.

Furthermore, the Attachment indicates a payment of $765.53 was made by Debtor on February 15, 2019. Such a payment was made in conformity with the terms of the proposed Chapter 13 Plan. Dckt. 2 at 8.

While the Proof of Claim seems possibly erroneous, the Bankruptcy Code is clear that a claim supported by a proof of claim is deemed allowed unless a party in interest objects. 11 U.S.C. § 502(a). Thus, even if inaccurate information was provided through the Proof of Claim, the evidence provided indicates the Objection must be sustained.

However, if inaccurate, Creditor may have concerns greater than prevailing on the Objection, where their Proof of Claim is attested to under penalty of perjury, and where representations made to the court must have evidentiary support pursuant to 11 U.S.C. § 9011. Furthermore, if Debtor is forced to

bring an Objection to the Creditor's Proof and prevails, then there may be some grounds (likely contractual) for recovery of prevailing party attorney's fees.

At the hearing, xxxxxxxxxxxxxx.

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

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

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

~~A. Provide a treatment that the debtor and creditor agree to (11 U.S.C. § 1325(a)(5)(A)),~~

~~B. Provide for payment in full of the entire claim if the claim is modified or will mature by its terms during the term of the Plan (11 U.S.C. § 1325(a)(5)(B)), or~~

~~C. Surrender the collateral for the claim to the creditor (11 U.S.C. § 1325(a)(5)(C)).~~

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

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

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

~~Furthermore, the objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed Proof of Claim, No. 3 asserting arrearages owing in the amount of $776.23. The Plan~~

does not propose to cure those arrearages. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearages.

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 Bank of America, N.A. ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

12. **16-21929-E-13 WW-1** **LINDA BOLTON** **Mark Wolff** **MOTION TO MODIFY PLAN** **3-8-19 [24]**

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

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 March 8, 2019. By the court's calculation, 39 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is ~~granted~~.

Linda Faye Bolton ("Debtor") seeks confirmation of the Modified Plan to provide for the claim of creditor Park Place South Homeowner's Association. Declaration ¶ 3, Dckt. 26. The Modified Plan adds the Park Place South HOA a Class 2 Creditor with monthly payments of $300.00, but still provides for total monthly payments of $900.00 and a 100 percent dividend to unsecured claims . Modified Plan, Dckt. 28. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S RESPONSE

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response on April 1, 2019. Dckt. 30. Trustee Responds noting that Debtor filed Supplemental Schedules I and J as Exhibits only, making it difficult for parties to find the alleged updated income and expenses.

DISCUSSION

Debtor's present Motion relies on updated supplemental Schedules. However, Debtor's updated Schedules have been provided as exhibits only and not filed as Supplemental Schedules.

At the hearing, xxxxxxxxxxxxxx.

~~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 Lynda Faye Bolton ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~**IT IS ORDERED** that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on March 8, 2019 is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick ("the Chapter 13 Trustee") for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

13. **19-20834-E-13 AP-1** **ALBERT SMITH** **Douglas Jacobs** **OBJECTION TO CONFIRMATION OF PLAN BY THE BANK OF NEW YORK MELLON**
3-28-19 [14]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney and Chapter 13 Trustee on March 28, 2019. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

The Bank of New York Mellon FKA The Bank of New York, as Trustee holding a secured claim ("Creditor") opposes confirmation of the debtor, Albert Smith's ("Debtor"), Plan on the basis that it does not provide for Creditor's secured claim or promptly cure prepetition arrears.

DISCUSSION

Creditor's objections are well-taken. A review of Debtor's proposed plan shows that Creditor's claim is unlisted, and not provided for. Plan, Dckt. 2.

Creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts a secured claim of $326,635.48 and a pre-petition arrearage of $12,768.68. The Plan does not propose to cure those arrearages. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). Additionally, failure to provide for Creditor's secured claim in full shows the plan is not feasible. 11 U.S.C. § 1325(a)(6).

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

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

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

14. **19-20047-E-13 BLG-1** **JULIUS/CHRISTINA JARVIS** **Chad Johnson** **MOTION TO CONFIRM PLAN** **2-27-19 [24]**

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

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 27, 2019. By the court's calculation, 48 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Plan is denied.

Julius Jarvis and Christina Jarvis ("Debtor") seek confirmation of the Plan, which would be the first confirmed plan in this case. The Plan proposes a monthly plan payment of 2,950.00 for 34 months, and $3,350.00 for the remaining plan term. Plan, Dckt. 27. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on March 29, 2019. Dckt. 34. Trustee states that while Debtor is currently proposing a monthly expense of $670.00 as a charitable contribution required by Debtor's faith, Debtor's federal tax returns demonstrate that in previous years Debtor was required to make an average monthly contribution of $108.33. Declaration ¶ 4, Dckt. 35.

Trustee argues that the present plan is not Debtor's best efforts where they are providing for unnecessary expenses.

DISCUSSION

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

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

On their Amended Schedule J, Debtor lists as an expense a $670.00 per month contribution to charity in line with their religious requirements. Dckt. 28. However, Trustee has presented evidence that in 2017, Debtor only made average monthly contributions of $108.33. Declaration ¶ 4, Dckt. 35.

Debtor has chosen not to respond and provide evidence that a 520% increase in charitable contributions is actual, reasonable, and stated in good faith. In the lack of a good faith, credible response for this purported increase, it appears that Debtor has instead attempted to create a slush fund to divert what should be plan monies into Debtor's pocket to be spent however Debtor desires.

Debtor has not provided evidence why their contribution requirements increased drastically after th filing of this Chapter 13 case.

The proposed Chapter13 Plan fails to comply with 11 U.S.C. § 1325 and 1322, the Motion is denied, and the Plan is not confirmed. [FN. 1,]

FN. 1. This unexplained 500%+ purported charitable increase raises other potential good faith issues for Debtor. If this case is dismissed, it is possible that such could be with prejudice, resulting in Debtor not being able to discharge the existing debtor in any future bankruptcy case. The statement of expenses on Schedule J were made under penalty of perjury, and making false statements under penalty of perjury has consequences. This does not mean that Debtor and Debtor's counsel cannot work to get this case back

on track, but they should not assume that they can let this case dismissed and get a different judge and Chapter 13 trustee in a subsequent case that would be unaware of the 500%+ increase in purported charitable contributions to support a 0.00% dividend general unsecured claim plan.

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

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

15. **18-25752-E-13** **RICARDO CORTEZ** **CONTINUED MOTION TO CONFIRM PLAN**
TJW-1 **Timothy Walsh**
1-10-19 [40]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee and Office of the United States Trustee on January 10, 2019. By the court's calculation, 54 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Plan is denied.

Ricardo J. Cortez ("Debtor") seeks confirmation of the Plan, which would be the first Confirmed Plan in this case. The Plan provides for payments of $1,759.00 per month for 60 months, and proposes a dividend of 0 percent to unsecured claims totaling $5,895.00. Dckt. 21.

CHAPTER 13 TRUSTEE'S RESPONSE

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response on February 19, 2019. Dckt. 46. The Chapter 13 Trustee, David Cusick ("Trustee"), states Debtor is $310.08 delinquent in plan payments.

Trustee states further that the proposed plan payment is not enough to cure the arrears of Class 1 creditor Shellpoint Mortgage in the 60 month term (Proof of Claim, No. 3 showing an amount necessary to cure arrears as $17,795.00 where the plan provides for only $15,804.31 to be paid within 60 months).

MARCH 5, 2019 HEARING

At the March 5, 2019 hearing, the court continued the hearing on the Motion to April 16, 2019 to allow Debtor to supplement the record.

DISCUSSION

Debtor has not filed supplemental pleading since the prior hearing.

Debtor is $310.08 delinquent in plan payments, which is only a fraction of the monthly $1,759.00 payment. However, delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

More substantially, Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. Proof of Claim, No. 3 states the amount necessary to cure arrears is $17,795.00 where the plan provides for only $15,804.31 to be paid within 60 months. Without Debtor objecting to the proof of claim of Shellpoint Mortgage, the proposed plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

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

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

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

16. **15-29454-E-13 MJD-3** | **MICHAEL/KAYLENE YANDEL** **Matthew DeCaminada** | **MOTION TO MODIFY PLAN** **3-11-19 [106]**

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, the United States Attorney for the IRS, the Franchise Tax Board, and Office of the United States Trustee on March 11, 2019. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is granted.

Michael Walter Yandel and Kaylene Marie Yandel ("Debtor") seek confirmation of the Modified Plan to reflect a recent loan modification and updated expenses. Declaration ¶ 10, Dckt. 109. The Modified Plan was changed to include the claim of Caliber Home Loans, Inc. as a Class 4, and provides that $103,368.00 be paid through February 2019 and payments of $205.00 be made for the remaining plan term. Plan, Dckt. 107. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee") filed an Opposition on April 2, 2019. Dckt. 117. Trustee opposes confirmation on the following grounds:

1. Debtor's Modified Plan relies on a motion to approve loan modification.

2. Debtor has actually paid $106,400.78 as of February 2019.

3. The loan modification became effective January 14, 2019. However, the Additional Provisions of the Modified Plan provide that $7,583.45 be paid towards arrears and $76,224.44 paid towards the ongoing mortgage by February 2019–thereby precluding Trustee from making the updated payments pursuant to the modification.

DEBTOR'S REPLY

Debtor filed a Reply on April 4, 2019. Dckt. 120. Debtor states Debtor has no objection to amending the Modified Plan with the Order Confirming, and has submitted a proposed order to the Trustee.

DISCUSSION

A review of the docket shows that the court has granted the Motion To Approve Loan Modification set for hearing the same day as the present Motion. Dckt. 101.

Furthermore, Debtor has proposed addressing the remaining grounds for opposition through the language of the Order Confirming the plan.

At the hearing, xxxxxxxxxxxxxx.

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 Michael Walter Yandel and Kaylene Marie Yandel ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on March 11, 2019, is confirmed. Debtor's Counsel shall prepare an appropriate order, which includes necessary changes addressed at the confirmation hearing, confirming the Chapter 13 Plan, transmit the proposed order to David Cusick ("the Chapter 13 Trustee") for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

17.	**15-29454-E-13 MJD-2**	**MICHAEL/KAYLENE YANDEL Matthew DeCaminada**	**MOTION TO APPROVE LOAN MODIFICATION 3-11-19 [101]**

Final Ruling: No appearance at the April 16, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, the United States Attorney for the IRS, the Franchise Tax Board, and Office of the United States Trustee on March 11, 2019. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

The Motion to Approve Loan Modification 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 Approve Loan Modification is granted.

The Motion to Approve Loan Modification filed by Michael Walter Yandel and Kaylene Marie Yandel ("Debtor") seeks court approval for Debtor to incur post-petition credit. Caliber Home Loans, Inc. ("Creditor"), whose claim the Plan provides for in Class 2c, has agreed to a loan modification that will reduce Debtor's mortgage payment from the current $2,060.12 per month to $1,261.92 per month. The modified principal will be $266,885.69, with a 40 year term [FN.1.] at 2.5 percent

interest.

A review of the Modification Agreement (Exhibit A, Dckt. 103) also shows a stepped interest rate, with interest increasing by 1 percent each year starting year 6 and ending year 9, then increasing in year 10 to the final rate of 6.680 percent for the remainder of the term.

FN.1. The Motion states the term is "480 months (4 years)," which appears to be a clerical error. The Agreement states the term is 40 years.

The Motion is supported by the Debtor's Declaration. Dckt. 104. The Declaration affirms Debtor's desire to obtain the post-petition financing and provides evidence of Debtor's ability to pay this claim on the modified terms.

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response indicating non opposition on April 2, 2019. Dckt. 114.

Though the motion does not comply with the requirements of Federal Rule of Bankruptcy Procedure 4001(c)(1)(B), the court will waive the defect because the Declaration filed in this matter provides much of the information. The moving party is well-served to ensure that future filings comply with the Federal Rules of Bankruptcy Procedure.

This post-petition financing is consistent with the Chapter 13 Plan in this case and with Debtor's ability to fund that Plan. There being no objection from the Chapter 13 Trustee or other parties in interest, and the Motion complying with the provisions of 11 U.S.C. § 364(d), the Motion to Approve the Loan Modification is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Loan Modification filed by Michael Walter Yandel and Kaylene Marie Yandel 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 court authorizes Michael Walter Yandel and Kaylene Marie Yandel to amend the terms of the loan with Caliber Home Loans, Inc. which is secured by the real property commonly known as 560 West F Street, Dixon, California, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion (Dckt. 103).

18. 18-27160-E-13 PGM-1 — CLAUDIA/EDWARD JENKINS — Peter Macaluso — MOTION TO CONFIRM PLAN — 2-27-19 [35]

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 27, 2019. By the court's calculation, 48 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is ~~xxxxx.~~

Claudia Jenkins and Edward Riley Jenkins ("Debtor") seek confirmation of the Amended Plan. The Amended Plan provides for payments of $1,500.00 for 3 months and $1,200.00 for 57 months. Amended Plan, Dckt. 40. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee") filed an Opposition on March 11, 2019. Dckt. 47. Trustee opposes confirmation on the basis that Debtor's Amended Plan relies on a pending Motion To Value collateral of the IRS. Trustee further opposes confirmation because the Amended Plan provides for attorney's fees of $4,000.00 (Dckt. 40), while the Rights and Responsibilities (Dckt. 13) and Disclosure of Compensation both indicate the attorney fee is $6,000.00. Dckt. 15.

DISCUSSION

Debtor's Amended Plan relied on the claim of the IRS being valued at $9,807.00. Amended Plan, Dckt. 40. On April 7, 2019, the court issued an Order valuing that claim at $29,913.28. Order, Dckt. 54. Therefore, the plan is not feasible. 11 U.S.C. § 1325(a)(6).

Additionally, Debtor's failure to clarify the attorney fees sought further suggests the plan is not feasible.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by Claudia Jenkins and Edward Riley Jenkins ("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.

19. **19-20660-E-13 DPC-1** **DAVID MANNING** **Pro Se** **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **3-27-19 [26]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor (*pro se*) on March 27, 2019. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on numerous grounds, which are stated fully in Trustee's Objection. Dckt. 26.

Debtor commenced this Chapter 13 case in pro se on February 4, 2019. This is the first bankruptcy case filed by Debtor in this District. While filing the Chapter 13 Plan form, it is left blank with the exception of listing a $1,600 post petition payment to Shellpoint Mortgage and no payment of a $20,000 pre-petition arrearage to that creditor. Plan, Class 1; Dckt. 12.

The grounds stated in the Objection include the following: following:

1. Debtor's petition and filing documents are not complete;

2. Debtor lists negative income;

3. Debtor fails to lists arrearage dividends to Class 1 claims;

4. Debtor did not list a dividend to or an estimate of the unsecured claims;

5. Debtor's plan fails to provide more to unsecured claims than the amount of Debtor's nonexempt assets required by 11 U.S.C. § 1325(a)(4).

6. Debtor has not provided Trustee with 60 days of employer pay advices, required by 11 U.S.C. § 521 and by Order of the court. Dckt. 8.

The numerous grounds raised in Trustee's Objection in large part demonstrate the plan is not feasible. 11 U.S.C. § 1326(a)(6).

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

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

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

20. **19-20660-E-13 PPR-1** **DAVID MANNING** **Pro Se** **OBJECTION TO CONFIRMATION OF PLAN BY NEWREZ, LLC 3-22-19 [23]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, and Office of the United States Trustee on March 22, 2019. By the court's calculation, 25 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

NewRez LLC dba Shellpoint Mortgage Servicing ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

A. The proposed plan does not account for Creditor's arrearages totaling $26,005.57.

B. The plan is not feasible on its face–the plan does not propose a monthly payment, in additional to numerous other defects.

Creditor's objections are well-taken.

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed

a timely proof of claim in which it asserts $26,005.57 in pre-petition arrearages. The Plan does not propose to cure those arrearages. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearages.

Furthermore, Debtor's plan is grossly devoid of essential terms. No plan payment is proposed, and no dividend to unsecured claims is listed. The plan is simply not feasible. 11 U.S.C. § 1325(a)(6).

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by NewRez LLC dba Shellpoint Mortgage Servicing ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

21.	**19-20562-E-13 DPC-1**	**MICHAEL/MICHELLE HAMBRICK Mohammad Mokarram**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 3-19-19 [17]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on March 19, 2019. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. Debtor has non exempt assets of $4,654.00 (primarily in the form of a tax refund), but their proposed dividend to unsecured claims is only 5 percent ($3,798.30).

B. Debtor's pay stubs indicate an average gross income of $11,536.25 monthly, which is higher than the $9,186.00 reported on Debtor's

Schedule I. Trustee asserts this ground for objection would be resolved if Debtor pays into the plan any tax refunds in excess of $2,000.00 during the plan.

DISCUSSION

Trustee's objections are well-taken.

Debtor has non-exempt assets of $4,654.00 (Declaration, Dckt. 19) but proposes a dividend to unsecured claims of only 5 percent ($3,798.30). Plan, Dckt. 2. Therefore, Debtor's plan fails the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4).

Debtor's monthly income is $11,536.25, which compared to the income stated on Schedule I, suggests Debtor is not providing all disposable income into the plan. Therefore, the Plan violates 11 U.S.C. § 1325(b)(1).

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

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

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

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

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

22. **19-20671-E-13 CAS-1** **LATANYA GREY** **Mary Ellen Terranella** **OBJECTION TO CONFIRMATION OF PLAN BY EXETER FINANCE, LLC 3-20-19 [18]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 20, 2019. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

Exeter Finance, LLC ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

A. The debtor, Latanya Lavette Grey's ("Debtor"), plan relies on valuing Creditor's collateral, which is a purchase money security interest purchased acquired less than 910 days before the commencement of this bankruptcy case.

B. Debtor proposes an interest rate of only 5 percent, rather than the prime rate of 5.5 percent. Creditor objects to any plan that proposes less than 5.5 percent plus 1 percent.

DISCUSSION

Debtor's proposed plan (Dckt. 2) proposes treating Creditor as a Class 2a, which is a claim not reduced by the value of the collateral.

The plan also provides for an interest rate of 5 percent on Creditor's claim. Creditor argues that this interest rate is outside the limits authorized by the Supreme Court in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). In *Till*, a plurality of the Court supported the "formula approach" for fixing post-petition interest rates. *Id.* Courts in this district have interpreted *Till* to require the use of the formula approach. *See In re Cachu*, 321 B.R. 716 (Bankr. E.D. Cal. 2005); *see also Bank of Montreal v. Official Comm. of Unsecured Creditors (In re American Homepatient, Inc.)*, 420 F.3d 559, 566 (6th Cir. 2005) (*Till* treated as a decision of the Court). Even before *Till*, the Ninth Circuit had a preference for the formula approach. *See Cachu*, 321 B.R. at 719 (citing *In re Fowler*, 903 F.2d 694 (9th Cir. 1990)).

The court agrees with the court in *Cachu* that the correct valuation of the interest rate is the prime rate in effect at the commencement of this case plus a risk adjustment. Because Creditor has not stated any grounds supporting a rate above the prime rate, the court fixes the interest rate as the prime rate in effect at the commencement of the case, 5.5 percent. The objection to confirmation of the Plan on this basis is sustained. *See* 11 U.S.C. § 1325(a)(5)(B)(ii).

While increasing the interest rate by 0.5 percent is something that could have been addressed in the language of the order confirming the plan, no opposition was presented by Debtor to Creditor's Objection or an objection filed by the Trustee set to be heard the same day. Dckt. 13.

Therefore, 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 Exeter Finance, LLC (("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

23. **19-20671-E-13** **LATANYA GREY** **OBJECTION TO CONFIRMATION OF**
DPC-1 **Mary Ellen Terranella** **PLAN BY DAVID P. CUSICK**
3-19-19 [13]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on March 19, 2019. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. Debtor failed to appear at the Meeting of Creditors on March 14, 2019.

B. Debtor has not provided Trustee with 60 days of pay advices.

C. Debtor's plan relies on a motion to avoid the lien of creditor Aaron's

Sale & Lease, which has not been set for hearing.

D. Debtor may be able to value the collateral secured by the claim of Exeter Finance, LLC. Therefore that claim should be a Class 2b, not Class 2a.

E. Debtor does not explain an asset listed as "Property equalization payment due from Jerry Grey per marital dissolution agreement."

F. Debtor does not explain an asset listed as "wrongful termination claim against former employer - value unknown."

G. Debtor does not explain an asset listed as *Grey v. Aurora Santa Rosa Hospital*.

H. Based on Debtor's pay advices, her income has almost doubled in 2019 without any explanation.

I. Debtor has not provided sufficient evidence regarding a $400.00 monthly expense supporting Debtor's 17 year old dependant, and utilities of $395.00.

DISCUSSION

Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Appearance is mandatory. *See* 11 U.S.C. § 343. Attempting to confirm a plan while failing to appear and be questioned by the Chapter 13 Trustee and any creditors who appear represents a failure to cooperate. *See* 11 U.S.C. § 521(a)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

The Continued Meeting of Creditors was held on March 28, 2019, and the Chapter 13 Trustee's Report indicates Debtor appeared. The Chapter 13 Trustee has filed nothing further, and the court therefore determines that Debtor's appearance has resolved this ground for opposing confirmation.

Debtor has not provided the Chapter 13 Trustee with employer payment advices for the sixty-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv); FED. R. BANKR. P. 4002(b)(2)(A), as well as by the Order of this court. Dckt. 7. Debtor has failed to provide all necessary pay stubs. That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Debtor's plan relies on a motion to avoid the lien of creditor Aaron's Sale & Lease. A review of the docket shows no such motion has been filed. Therefore, the plan is not feasible.11 U.S.C. § 1325(a)(6).

Trustee asserts Debtor may be able to value the secured claim of Exeter Finance, LLC. However, a review of Proof of Claim, No. 3 and the attached agreement demonstrates the debt was incurred on August 4, 2017. Therefore, the claim is correctly classified as a Class 2a.

Trustee further asserts that Debtor lists several items on Schedule B as assets, but does not adequately describe the items. It is unclear what legal basis Trustee's objections here are because none have been stated. Possibly Trustee asserts that Debtor is not cooperating as required by 11 U.S.C. § 521(a)(3). However, such is not stated in the Motion.

For some of these assets, Debtor has claimed an exemption. A glaring omission in the Plan is no provision is made for the prosecution of the wrongful termination claim, the payments of costs and expenses for such prosecution (such as attorney's fees), and how the proceeds are to be distributed between the Debtor and the Plan.

Trustee provides evidence that Debtor's income has suddenly increased, nearly doubling from 2018 to 2019. Declaration ¶ 7, Dckt. 15. Furthermore, Debtor's Schedule I does not appear to accurately reflect the higher income as shown on the pay advices. Without a clear picture of Debtor's financial reality, the plan does not appear feasible. 11 U.S.C. § 1325(a)(6).

Trustee also argues some expenses do not appear necessary, including $400.00 monthly expense supporting Debtor's 17 year old dependant, and utilities of $395.00. Unreasonably high expenses indicate that the Plan violates 11 U.S.C. § 1325(b)(1).

Prior Case

This is Debtor's second recent case. Her prior case, 17-25873, in which she was represented by the same counsel as in this case, was dismissed on January 16, 2019.

Conclusion

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

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

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

24. **19-20975-E-13 GEL-1** **INOCENTE SALINAS** **Gabriel Liberman** **MOTION TO VALUE COLLATERAL OF TRAVIS CREDIT UNION** **3-14-19 [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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on March 14, 2019. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of Travis Credit Union ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $8,136.32 .

The Motion filed by Inocente Salinas ("Debtor") to value the secured claim of Travis Credit Union ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 16. Debtor is the owner of a 2010 Audi A4 Quatro ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $5,975.00 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).

Creditor's Proof of Claim

Creditor filed Proof of Claim, No. 2 on March 11, 2019. Creditor asserts a claim of $8,136.32, and values the collateral at $8,273.00.

DISCUSSION

It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). As part of its burden of producing substantial evidence to rebut the presumptive validity, the objecting party bears the burden of producing substantial evidence as to the value of the collateral securing any portion of the claim. *In re Austin,* 583 B.R. 480, 483 (B.A.P. 8th Cir. 2018). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and requires financial information and factual arguments. *Id.* Notwithstanding the prima facie validity of a proof of claim, the ultimate burden of persuasion is always on the claimant. *In re Holm*, 931 F.2d at p. 623.

Here, Debtor's Declaration states the following:

1. The schedules filed with my case disclose my interest in the personal property commonly known as a 2010 Audi A4 Quatro with 120,000 miles and with a value of approximately $5,975.

2. The schedules filed on our case also disclose a debt owed to TRAVIS CREDIT UNION in the amount of $8,554.00.

3. The retail value of the 2010 Audi A4 Quatro is likely around $5,975.00 based on my knowledge of the mileage and condition of the vehicle and based on examining current market conditions. Hence the replacement value of the vehicle is $5,975.00.

Declaration ¶¶ 3-5, Dckt. 18. Apart from informing the court as to the mileage on the Vehicle, these statements are mere conclusions of what is said elsewhere. Debtor does not provide any factual detail regarding the Vehicle which might result in a lower valuation than the one advanced by Creditor. *In re Austin,* 583 B.R. at p. 483. Therefore, Debtor did not present substantial evidence to rebut Credit's Proof of Claim.

Debtor merely dictating to the court that the Schedules state a value and telling the court a value in the Declaration does not assist the finder of fact determining that such is sufficient to overcome the presumption arising under the Proof of Claim. While not a lot, some information is necessary. In making this Declaration, it appears either that the Debtor does not have knowledge of the vehicle or the Declaration was not reviewed after it was prepared by someone who had no knowledge of the vehicle and signed by Debtor under the belief, "if I sign it, I win."

Creditor's Proof of Claim is prima facie evidence of the value of the Vehicle and its secured claim. Based on the evidence presented, the value of the Vehicle is $8,273.00 at the time of filing.

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on November 4, 2015 which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $8,136.32. Proof of Claim, No. 2. Therefore, Creditor's claim secured by a lien on the asset's title is fully-collateralized. Creditor's secured claim is determined to be in the amount of $8,136.32, which is less than the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Value Collateral and Secured Claim filed by Inocente Salinas ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Travis Credit Union ("Creditor") secured by an asset described as 2010 Audi A4 Quatro ("Vehicle") is determined to be a secured claim in the amount of $8,136.32 , and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $8,273.00 and is encumbered by a lien securing a claim that does not exceed the value of the asset.

25. **19-20779-E-13 DPC-2** **ASHA KING** **Pro Se** **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 3-27-19 [34]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor (*pro se*) on March 27, 2019. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. The court granted a motion for relief as to Debtor's real property on March 14, 2019, which contemplated an unlawful detainer action against Debtor. Debtor may not be able to make payments given the moving expenses.

B. Debtor's expenses exceed income by $652.44.

C. Debtor understates some expenses on Schedule J, including listing food

expenses for her and her son at only $163.00 per month and not listing any vehicle insurance for her two vehicles.

D. Debtor is delinquent $750.00 in plan payments.

E. Debtor failed to appear at the March 21, 2019 Meeting of Creditors. While Debtor reported to Trustee she was ill, the Trustee has insufficient information to determine the plan's feasibility. The Meeting was continued to May 2, 2019.

F. Debtor's plan and filing documents utilized outdated forms.

G. Debtor listed the claims of Department of Ed/Navient and the U.S. Dept. of education as priority claims. However, student loans are general unsecured claims.

H. The proposed plan does not propose a dividend to unsecured claims.

I. Debtor failed to provide her tax return or transcript for the most recent prepetition filing year, or her pay advices for the 60 days prior to filing.

DISCUSSION

Trustee's objections are well-taken.

Several of Trustee's grounds for objection cast doubt as to the feasibility of the plan. Debtor will likely have to relocate to another home, lists negative disposable income, understates expenses, is delinquent in plan payments, fails to properly classify some claims, and proposes no dividend to unsecured claims. The court agrees the plan is not feasible. 11 U.S.C. § 1325(a)(6).

Debtor also has not provided the Chapter 13 Trustee with employer payment advices for the sixty-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv); FED. R. BANKR. P. 4002(b)(2)(A). Debtor has failed to provide all necessary pay stubs. That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

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

Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Appearance is mandatory. *See* 11 U.S.C. § 343. Attempting to confirm a plan while failing to appear and be questioned by the Chapter 13 Trustee and any creditors who appear represents a failure to cooperate. *See* 11 U.S.C. § 521(a)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Debtor has also utilized outdated forms for her filing documents and plan.

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

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

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

26. **19-20779-E-13** **ASHA KING** **OBJECTION TO DISCHARGE BY**
DPC-1 **Pro Se** **DAVID P. CUSICK**
3-15-19 [30]

Final Ruling: No appearance at the April 16, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) on March 15, 2019. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

The Objection to Discharge has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4004(a). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Objection to Discharge is sustained.

The Chapter 13 Trustee, David Cusick ("Objector") objects to Asha Nkenge King's ("Debtor") discharge in this case. Objector argues that Debtor is not entitled to a discharge in the instant bankruptcy case because Debtor previously received a discharge in a Chapter 7 case.

Debtor filed a Chapter 7 bankruptcy case on October 2, 2015. Case No. 15-27790. Debtor received a discharge on February 16, 2016. Case No. 15-27790, Dckt. 30.

The instant case was filed under Chapter 13 on February 11, 2019.

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

Here, Debtor received a discharge under 11 U.S.C. § 727 on February 16, 2016, which is less than four years preceding the date of the filing of the instant case. Case No. 15-27790, Dckt. 30. Therefore, pursuant to 11 U.S.C. § 1328(f)(1), Debtor is not eligible for a discharge in the instant case.

Therefore, the Objection is sustained. Upon successful completion of the instant case (Case No. 19-20779), the case shall be closed without the entry of a discharge, and Debtor shall receive no discharge in the instant case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Discharge filed by The Chapter 13 Trustee, David Cusick ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to Discharge is sustained , and upon successful completion of the instant case, Case No. 19-20779, the case shall be closed without the entry of a discharge.

27. 17-25489-E-13 MS-2 FRED KENDLE

MOTION TO MODIFY PLAN
3-12-19 [49]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 12, 2019. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy 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~~.

Fred Kendle ("Debtor") seeks confirmation of the Modified Plan to cure a delinquency in plan payments. Dckt. 53. The Modified Plan provides for $21,951.42 to be paid by month 18, payments of $1,628.00 from months 19 to 60, and various increased arrearage payments. Modified Plan, Dckt. 50. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on August 18, 2017. Dckt. 59. Trustee opposes confirmation on the following grounds:

1. Debtor is $1,628.00 delinquent in plan payments.

2. Sections 7.05, 7.06, and 7.07 of the Modified Plan propose increased amounts towards arrearages, but do not specify those amounts.

3. Debtor made changes to expenses in Supplemental Schedule J (Dckt. 55) without explaining them.

DEBTOR'S REPLY

Debtor filed a Reply on April 9, 2019. Dckt. 62. Debtor replies that he became current in payments (not that he made any specific payment amount) on April 3, 2019. Declaration ¶ 3, Dckt. 63.

Debtor states further Trustee's objection as to sections 7.05-7.07 can be addressed in the order confirming the plan, and Debtor has filed a supplemental declaration to explain changes in expenses.

Debtor testifies in the Supplemental Declaration that he has had an increase in business and can address needed home maintenance, fully insure his vehicle, and have some entertainment expense. Dckt. 63.

DISCUSSION

At the hearing, xxxxxxxxxxxxxx.

~~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 Fred Kendle ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~**IT IS ORDERED** that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on March 12, 2019, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick ("the Chapter 13 Trustee") for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

28. **19-21997-E-13 MS-1** | **SALLIE ROSS-FILGO AND JODY FILGO** **Mark Shmorgan** | **MOTION TO VALUE COLLATERAL OF TD AUTO FINANCE** **3-31-19 [9]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditor, , and Office of the United States Trustee on March 31, 2019. By the court's calculation, 16 days' notice was provided. 14 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of TD Auto Finance ("Creditor") is denied without prejudice.

The debtors, Sallie Ann Ross-Filgo and Jody Lyn Filgo ("Debtor") filed this Motion to value the secured claim of TD Auto Finance ("Creditor"). Debtor is the owner of a 2012 Cadillac SRX Sport Utility 4D ("Vehicle"). The grounds stated with particularity (Fed. R. Bankr. P. 9013) and the relief requested in the Motion are summarized as follows:

A. Debtor's Vehicle is encumbered by a lien to secure the claim of Creditor.

B. The claim of Creditor secured by the Vehicle is $19,879.69. (No proof of claim has been filed by Creditor.)

C. The $24,604.88 financing when the vehicle was purchased, for which Debtor states the current balance is $19,879.69, is comprised of the purchase money obligation for purchasing the vehicle and additional obligations. These amounts are stated in the Vehicle Contract, Exhibit A, Vehicle Contract; Dckt. 12 at 3, to be:

1. $15,942.97 vehicle price (price, documentary fee, inspection fee, sales tax, and titling)There is also a "three for one fee" which the court cannot identify as part of the purchase of the vehicle. [FN. 1]

FN.1. As discussed by the California Court of Appeal, the state sales tax is not a tax on the sale but an excise tax imposed upon the retailer for the "privilege of conducting a retail business." *Xerox Corp. v. County of Orange*, 66 Cal. App. 3d 746, 756 (Cal. Ct. App. 1977); *see* CAL. REV. & TAX. CODE § 6051 (imposing tax on retailers). A retailer is allowed to add the sales tax to the sales price under specified circumstances (which is the common practice in California). CAL. CIV. CODE § 1656.1.

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2. $8,661.91 for Three for One Fee, Negative Equity From Trade In, Service Contract, GAP Coverage. (Debtor's computation of this portion is higher, $9,162.91, which appears to be inconsistent with the Contract.)

D. As provided in *In re Penrod*, 611 F.3d 1158 (9th Cir. 2010), the prohibition of valuing a purchase money claim in the "hanging paragraph" in 11 U.S.C. § 362(a) only applies to the purchase money portion of the secured claim, and the non-purchase money portion may be valued pursuant to 11 U.S.C. § 506(a).

E. The non-purchase money portion of amount financed is 35.2% (using the court's calculations of $8,661.91/$24,604.88) of the total amount financed.

F. After proportionally applying the payments made pre-petition to the purchase money and non-purchase money portions of the obligation, the current claim of $19,879.69 consists of:

1. $12,882.05 is the current purchase money portion of the secured claim, and

2. $6,997.64 is the current non-purchase money portion of the original obligation.

Therefore, Debtor then concludes that the "collateral held by Creditor . . . be valued at [$12,688.53] and the reminder of the be paid as an unsecured claim pursuant to the Chapter 13 Plan." Motion, p. 3:14-17; Dckt. 9. [FN. 2.]

FN. 2. The court uses the dollar amounts as computed by the court which are $214.11 higher than that

computed by Debtor. As discussed below, this computational difference is not relevant to the ruling on this Motion.

Relief Pursuant to 11 U.S.C. § 506(a)

Debtor's Motion uses a common misnomer when referencing a Motion seeking relief pursuant to 11 U.S.C. § 506(a), stating that the relief requested is to "value the collateral." The relief sought pursuant to 11 U.S.C. § 506(a) is to value a creditor's secured claims. Such value is stated to be the value of the creditor's interest in the estate's interest in the collateral. 11 U.S.C. § 506(a). Thus, it is necessary for the court to value the collateral, but the ruling does not stop there.

After determining that a creditor has a secured claim, the first step is to value the collateral. As stated by Debtor, Congress put a limit on the use of 11 U.S.C. § 506(a) in a Chapter 13 case when the claim is a purchase money obligation secured by a vehicle, for which the purchase money lien was obtained withing 910 days of the bankruptcy case. Here, the vehicle was purchased within 910 days, so the hanging paragraph of 11 U.S.C. § 1325(a) is in play with respect to Creditor's claim.

However, as the Ninth Circuit has determined in *Penrod*, merely because a creditor elects to provide financing for more than the purchase of a vehicle does not insulate the other financing from the operation of 11 U.S.C. § 506(a).

The definition of a "purchase money security interest" is determined by state law. *Id.* California Commercial Code § 9103 "does not provide a precise, encapsulated definition of a purchase money security interest, but rather a string of connected definitions." *Id.* at 1161; CAL. COM. CODE § 9103.

In *Penrod*, the Ninth Circuit Court of Appeals quoted the plain language of the California Commercial Code, stating,

> "'Purchase money collateral' means goods or software that secures a purchase money obligation." CAL. COM. CODE § 9103(a)(1). "'Purchase money obligation' means an obligation of an obligor incurred as all or part of the price of the collateral or for value given to enable the debtor to acquire rights in or the use of the collateral if the value is in fact so used." CAL. COM. CODE § 9103(a)(2).

611 F.3d at 1161.

The California Commercial Code defines the term "goods" to be,

> (44) "Goods" means all things that are movable when a security interest attaches. The term includes (i) fixtures, (ii) standing timber that is to be cut and removed under a conveyance or contract for sale, (iii) the unborn young of animals, (iv) crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes, and (v) manufactured homes. The term also includes a computer

> program embedded in goods and any supporting information provided in connection with a transaction relating to the program if (i) the program is associated with the goods in such a manner that it customarily is considered part of the goods, or (ii) by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods. The term does not include a computer program embedded in goods that consist solely of the medium in which the program is embedded. The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before extraction.

CAL. COM. CODE § 9102(44). Physical "things" are included in the definition, but contracts, claims, instruments, letters of credit, and other non-physical "things" are not included.

The court applied the above legal principles in computing the purchase money and non-purchase money portions of the $24604.88 credit extended through the Vehicle Contract.

Value of the Vehicle

The Motion fails to allege a value for the Vehicle. Rather, Debtor assumes that the law provides that a creditor forfeits non-purchase money security interests in vehicles merely because they are a non-purchase money obligation.

In Debtor's Declaration, Debtor appears to carefully avoid expressing any opinion of value for the Vehicle. Dckt. 11. Debtor does provide detailed testimony under penalty of perjury of the purchase money - non-purchase money computation stated in the Motion. Debtor then provides the legal conclusion of what is non-purchase money financing. Again, Debtor provides no factual testimony as to the value of the vehicle. [FN. 3]

FN. 3. The court believes it would be interesting to have the two Debtors sworn in and put on the stand to testify as to their personal knowledge of what constitutes purchase money and non-purchase money obligations. Then, to provide a detailed explanation of how they make such computations and their legal training to understand such Commercial Code legal concepts. If skeptical, a judge might believe that the "testimony" is nothing more than a cut and paste of a lawyer's or paralegal's drafting of allegations, and then signed by Debtor with no review and no actual knowledge of what is stated therein.

Debtor having failed to provide the court with evidence of the value of the Vehicle, the court is precluded from making the first factual determination – the value of the Vehicle. In the hybrid purchase money/non-purchase money hanging paragraph situation, the basic analysis is as follows:

A. The value of the vehicle is determined.

B. If the value is less than the purchase money portion of the obligation, the secured claim is valued at the purchase money obligation and the balance is unsecured.

C. If the value is greater then the purchase money obligation, then the secured claim is valued at the amount of the purchase money obligation and such portion of the non-purchase money for which there is value in the vehicle above the purchase money obligation, with any further amount of the non-purchase money obligation being an unsecured claims.

Here, the court cannot make the above determination because no evidence of the value of the vehicle is presented in support of the Motion.

The Motion is denied without prejudice. [FN. 4.]

FN. 4. If the court thought the Motion had been filed intentionally seeking relief not permitted under the Bankruptcy Code, the Motion would have just been denied, not denied without prejudice. With such a denial, Debtor would have been barred from attempting to litigation the issue a second time. That would have saddled the Debtor will the full amount of the secured claim - purchase money and non-purchase money obligations.

However, the court is confident that such was not done in an intentional attempt to mislead the court into issuing an order forfeiting property of a creditor beyond the law in the Bankruptcy Code. Debtor's counsel has a solid reputation and is respected in the community. This appears to be a case of over exuberance about a possible legal theory and counsel just got too far out over his skis. Thus, this is, as a recent former President would say, a "teachable moment" rather than a "call the carrier" moment.

At this juncture the court notes that a response from Debtor that rather than presenting evidence, the court should just canvas the file, look at the Schedules, and then the court present the evidence for the Debtor would not be consistent with there being a good faith error. Equally suspect would be a request to allow Debtor, now caught in the error, to "supplement the record" and add evidence on the fly or continue the hearing to allow the Debtor to produce the evidence.

By denying the Motion without prejudice, Debtor can have his day in court - based on a new motion. To allow this Motion to be "supplemented" would create the appearance of the federal court being one in which a party can "take a shot at it," but if called on not providing proper evidence or the correct law to just continue the hearing. This would make it appear that there could be an economic gamble in which those who choose to cut corners and the law to be more profitable would have an upside from improperly seeking relief. Neither the court nor counsel such as the one in the present case for Debtor would allow such an appearance to be created.

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

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

The Motion for Valuation of Collateral filed by Sallie Ann Ross-Filgo and Jody Lyn Filgo ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice.

29. 19-21951-E-13 SS-3 JASMINE SMITH MOTION TO EXTEND AUTOMATIC STAY O.S.T. 4-10-19 [19]

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the 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 Chapter 13 Trustee, creditors, and Office of the United States Trustee on April 10, 2019. By the court's calculation, 6 days' notice was provided. The court set the hearing for April 16, 2019. Dckt. 24.

The Motion to Extend the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing ----------.

The Motion to Extend the Automatic Stay is denied.

Jasmine Rae Smith ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 19-20397) was dismissed on March 28, 2019, after Debtor failed to pay the filing fee. *See* Order, Bankr. E.D. Cal. No. 19-20397, Dckt. 43,

March 28, 2019. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because Debtor could not access her funds (Debtor stating she was waiting on a replacement debit card), and Debtor's attorney did not inform her of the correct hearing date on the Order To Show Cause. Declaration, Dckt. 21; Declaration, Dckt. 22.

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

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

A. Why was the previous plan filed?

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

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

Debtor has not sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay. Here, Debtor testifies under penalty of perjury that she could not pay her filing fee with her PayPal debit card missing–it taking two weeks for said card to arrive.

This explanation is not credible. The Order To Show Cause states that payment was due in the prior case on February 22, 2019. Bankr. E.D. Cal. No. 19-20397, Dckt. 28. The hearing on that matter was not until March 26, 2019. Bankr. E.D. Cal. No. 19-20397, Dckt. 42. The record shows that

Debtor and Debtor's counsel elected to not appear at the March 26, 2019 hearing, with counsel stating that he had mis-calendared the date. However, this does not provide an explanation as to why Debtor could not get the payment made. If for some reason it had taken more than two weeks from the February 22, 2019 payment date (which was five weeks before the March 26, 2019 hearing date), such was not stated in Debtor's Declaration. Taking Debtor's statements under penalty of perjury at face value, there is no reason that the fees were not paid by March 8, 2019 (two weeks after February 22, 2019, if Debtor waited until February 22, 2019 to look for her PayPal debit card and was not using that card for any purchases prior to that time).

It is critical that Debtor appreciate that one cannot just say whatever sounds good, but testimony in federal court must be credible. Making non-credible (and internally inconsistent) statements under penalty of perjury has consequences.

From the testimony provided by Debtor, the court concludes that something financially was afoot and Debtor chose to divert the monies for other purposes.

Debtor has not rebutted the presumption of bad faith. In fact, Debtor's testimony under penalty of perjury indicates conduct of less than good faith with respect to the failure to pay the filing fees in the prior case and this Motion in the current case. [FN. 1]

FN. Fortunately for Debtor the judge in this Department follows the direction of the Supreme Court for statutory construction and has noted in other cases, as this one, that the plan language of 11 U.S.C. § 362(c)(3)(A) terminates the automatic stay only as to the Debtor.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Extend the Automatic Stay filed by Jasmine Rae Smith ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to extend the automatic stay, which terminates only as to Debtor pursuant to 11 U.S.C. § 362(c)(3)(A) thirty days after the commencement of this case, is denied. No determination is made by the court to the other provisions of 11 U.S.C. § 362(a) that apply to property of the bankruptcy estate.

30. **17-26704-E-13** **SHERRY BERCU** **MOTION TO INCUR DEBT O.S.T.**
CYB-2 **Candace Brooks** **4-8-19 [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)(3) 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 April 8, 2019. By the court's calculation, 8 days' notice was provided. The court set the hearing for April 16, 2019. Dckt. 44.

The Motion to Incur Debt was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing ----------.

The Motion to Incur Debt is granted.

Sherry Lynn Bercu ("Debtor") seeks permission to purchase real property commonly known as 4930 San Francisco Street, Rocklin, California, with a total purchase price of $342,500.00 and monthly payments of $2,314.20 to Pointequity Mortgage over 30 years with a 4.375 percent fixed interest rate.

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. [FN. 1]

FN. 1. In the Motion Debtor advises the court, Trustee, and creditors that since the filing of the case that Debtor has gotten married. It appears that the confirmed plan in this case is based on Debtor being single and having to shoulder all of the household expenses and there being no other income in the family unit. To the extent that there are any significant changes, such can be for the Trustee or creditors to address, if at all.

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 Sherry Lynn Bercu 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 Sherry Lynn Bercu is authorized to incur debt pursuant to the terms of the Loan Approval, Exhibit C, Dckt. 41.

31.	**19-20606-E-13 DPC-1**	**ROBERT WATTS AND SONYA SMITH Justin Kuney**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 3-19-19 [21]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on March 19, 2019. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. The debtors', Robert Bernard Watts and Sonya Kristi Smith ("Debtor"), plan provides for special treatment of student loans in the additional provisions of the plan. However, it is unclear whether they are only being paid pursuant to an Income Driven Repayment ("IDR") plan, or if those claims are also provided for as regular unsecured claims (given a 36 percent dividend in the plan).

B. The plan does not specify whether Debtor is already on an IDR plan, and what those payments are if Debtor is.

C. While the additional provisions provide that the U.S. Dept. Of Education

shall not disqualify the Debtor due to bankruptcy, (Section 7.02(b)), Trustee is not certain that creditor will accept the provisions in a general fashion.

D. The additional provisions provide that the claim of Granite State Mg, is to be treated as a Class 2 for distribution priority purposes, but is silent on the class of Dept. Of Ed claim.

E. The plan proposes to pay student loan claims prior to confirmation of the plan. 11 U.S.C. § 1326(a) does not permit such payment for student loans.

DISCUSSION

Trustee's objections are well-taken.

It appears Debtor is seeking to treat students loans as a Class 4 claim, paid directly by Debtor through the life of the plan based on the IDR plan payments due. However, Class 4 claims are secured claims not in default and maturing after completion of the plan. Student loans do not qualify for this treatment.

It is unclear from the terms of the plan whether the student loans will receive only the IDR amounts, or whether they will also receive a 36 percent dividend provided to unsecured claims. Based on the language of the plan, and student loans being unsecured claims, it appears the latter would be the plain meaning of the proposed plan.

Further uncertain is whether Debtor is already on an IDR plan, what those payments might be once Debtor is on such a plan, what the distribution priority of the student loan is, whether the Debtor will qualify at all for an IDR plan, and how Debtor will abide by the IDR plan prior to confirmation of the plan.

What has been presented is not a clear picture of what Debtor's plan is, what payments will be made, and when they will be made. Without a clear picture of the financial requirements of the plan, the plan does not appear feasible. 11 U.S.C. § 1325(a)(6).

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

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

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

The Objection to the Chapter 13 Plan filed by The Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of

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

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

32.	**19-21042-E-13 JPJ-1**	**MICHAEL/BERNADETTE AMBERS** **Lucas Garcia**	**OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON - DAVID CUSICK SUCCESSOR TRUSTEE 3-22-19 [32]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and Chapter 13 Trustee on March 21, 2019. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

The former Chapter 13 Trustee, Jan Johnson, who has now been succeed by Chapter 13 Trustee David Cusick ("Trustee") opposes confirmation of the Plan on the basis that:

A. The debtors, Michael Rae Ambers and Bernadette Elizabeth Ambers ("Debtor"), stated at the Meeting of Creditors the gross income of

$127,000.00 listed on the Statement of Financial Affairs was incorrect–these funds were a distribution from Debtor's decedent mother's estate received in 2018. Because Debtor failed to accurately list this asset, Trustee argues the Plan has not been proposed in good faith.

B. Debtor has non-exempt assets of $201,195.67, but proposes a 0 percent dividend to unsecured claims.

C. The proposed plan payment of $5,000.00 is insufficient when considering Trustee's fees. The plan payment would need to be increased to $5,244.57.

D. Debtor failed to provide a completed Class 1 Checklist.

No declaration or other evidence was filed supporting the Objection.

DISCUSSION

Some of Trustee's objections are well-founded. However, some grounds have not been clearly demonstrated to the court.

Trustee has opted not to support her Objection with a declaration or other evidence establishing alleged facts. While there may be instances where an objection can be made without providing additional evidence, often times such is insufficient.

Trustee asserts that Debtor made an admission at the Meeting of Creditors that assets listed as a "lawsuit settlement" in the amount of $127,000.00 on Debtor's Statement of Financial Affairs (Dckt. 1) were not properly identified. No evidence was provided that an opposing party admission was made.

Without such evidence, the court does not have cause here to doubt the statements made by Debtor under penalty of perjury. Thus, Trustee has not shown that the plan was not proposed in good faith.

Trustee further argues Debtor failed to provide Form EDC 3–086 (Class 1 Checklist) as required by Local Bankruptcy Rule 3015-1(b)(6), and is therefore not cooperating as required by 11 U.S.C. § 521(a)(3). However, no evidence has been provided in support of this allegation. The court does not know whether Debtor has provided the Class 1 Checklist to the Trustee on the evidence presented.

Additionally, Trustee asserts the plan payments of $5,000.00 are insufficient to cover the payments provided for in the plan and the Trustee's fees. However, Trustee does not present evidence of what the Trustee's fee is.

The court here has reviewed the plan. The proposed plan provides for monthly payments of $500.00 to administrative expenses, $4,150.00 to Class 1 claims, and $175.00 to Class 2 claims, totaling $4,825.00. Assuming an 8 percent Trustee fee ($386.00), the monthly payment would need to be

$5,211.00. Therefore, the plan is not feasible and this ground for objection is well-taken. 11 U.S.C. § 1325(a)(6).

Trustee also argues the plan fails the liquidation test. Here, too, the court has independently reviewed Debtor's schedules filed on the court's docket (Trustee having opted not to provide other evidence). On Debtor's Schedules A/B, Debtor lists total assets of $841,596.00. Dckt. 1. Debtor also lists $127,000.00 from a lawsuit on her Statement of Financial Affairs. *Id*. Debtor claims exemptions totaling only $58,320.00 on Schedule C, and lists secured claims totaling $520,459.33 on Schedule D. *Id*.

Based on the above numbers, Debtor clearly has significant non-exempt assets. However, her proposed plan provides a dividend of 0 percent to unsecured claims. Plan, Dckt. 2. Therefore, Debtor's plan fails the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4), and this ground for objection is also well-taken.

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

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

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

33. 19-21042-E-13 LBG-2 | **MICHAEL/BERNADETTE AMBERS** | **CONTINUED AMENDED MOTION TO EXTEND AUTOMATIC STAY**

Lucas Garcia | **3-15-19 [23]**

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the 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.

The motion was set for hearing on an order shortening time by Local Bankruptcy Rule 9014-1(f)(3). Debtor provided notice to creditors, the Chapter 13 Trustee, and the office of the U.S. Trustee. Dckt. 26.

The Motion To Extend Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

The Court Scheduled the Motion for Final Hearing on April 16, 2019.

The Motion To Extend Automatic Stay is denied.

Debtors seek to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c)(3) extended beyond 30 days in this case. This is the Debtors' second bankruptcy petition pending in the past 12 months and sixth bankruptcy case overall. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtors 30 days after filing of the petition.

The Debtors' prior bankruptcy case was dismissed voluntarily by the Debtors on July 21, 2018, due to an unexpected change in their financial situation. Case No. 16-26860, Dckt. 48.

Debtor's Declaration filed in support of the Motion provides testimony that Debtor's son suffered a spinal injury after his wedding, and that Debtor's provided financial support to their son for both the wedding and injury related expenses. Declaration ¶ 5, Dckt. 25. Debtor states further that

Debtor's son is not expected to need further financial assistance, and therefore Debtor can resume efforts to preserve Debtor's home and complete a Chapter 13 plan.

Discussion

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond 30 days if the filing of the subsequent petition was in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11, or 13. *Id.* at § 362(c)(3)(C)(i)(III). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 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, 209-210 (2008).

The Debtors assert that the previous and present cases were filed to preserve their home. In the previous bankruptcy, Debtors were unable to fulfill their obligations under chapter 13 because they had financially helped their son with his wedding expenses and the unanticipated costs associated with his unexpected spinal injury soon after his wedding. Declaration ¶ 5, Dckt. 25. The Debtors were unable to catch up on plan payments and the prior plan became unfeasible. The Debtors state that their son is not expected to need their further assistance and that they wish to proceed in this bankruptcy to preserve their home. *Id*.

MARCH 20, 2019 HEARING

At the March 20, 2019 hearing the court noted that Debtor's prior case was assigned to the Hon. Ronald Sargis. The court notes that the general policy in the District is that when a debtor has to file multiple cases, then the case should be assigned to the judge who heard the prior case to avoid the appearance of judge or trustee shopping.

The court continued the matter for further consideration, and to allow the judge to whom the case is assigned to consider transferring this case to the Hon. Ronald H. Sargis, the judge to whom the prior case in which there was a confirmed plan. Civil Minutes, Dckt. 37.

The court also issued an Interim Order extending the stay through and including April 22, 2019 at 11:59 p.m. unless extended or terminated by further order of the court. Order

TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on April 2, 2019. Dckt. 42. Trustee asserts Debtor's Declaration (Dckt. 25) fails to provide a time frame for when assistance was provided to Debtor's son for either the wedding or personal injury.

The Trustee further asserts the Order Confirming Chapter 13 Plan in the prior case required Debtor to turn over to the Trustee receipts of any inheritance received by Debtor from her mother's passing. Trustee states it is unclear whether funds listed on Debtor's Statement of Financial Affairs as $127,000.00 from a "lawsuit" are actually inheritance which Debtor would have been required to turnover.

Trustee requests the Motion be denied on the aforementioned grounds.

DISCUSSION

In the Declaration in support of the Motion Debtor's testify that there were two main causes of the failure of the prior bankruptcy case:

> 5. We further state that the dismissal of the prior case was NOT due to the willful inadvertence or negligence on our part. Our son had a severe spine injury right after being maried [sic] and we had both financially helped with the wedding and then found ourselves needed to help with the injury and recovery. He is not expected to need our further assistance at present and we wish to proceed in preserving our home and fulfilling our obligations in Chapter 13.

Declaration ¶ 5, Dckt. 25. Clearly, a serious medical injury intervening in the financial plans of a debtor is an extraordinary event. However, Debtors also explain that funding their son's wedding also caused the dismissal.

In the Chapter 13 Plan in the prior case, it does not appear that funding a wedding was included in Debtor's expenses. 16-26860; Schedule J, Dckt. 1 at 31-32. Additionally, in the Order confirming the Plan in the prior case, express requirements for the turn over of monies received by Debtor Elizabeth Ambers from a trust distribution to the Chapter 13 Trustee. *Id.*; Order, Dckt. 41. The Chapter 13 Plan in the prior case required $4,900.00 a month payments. *Id.*, Dckt. 5. The Chapter 13 Trustee's Final Report states that Debtor paid $68,600.00 into the Plan. *Id.*, Dckt. 54. With $4,900 a month payments, this would represent fourteen (14) months payments. The case was filed in October 2016, the payments commenced in November 2016, and fourteen months would run through December 2017.

It does not appear that trust distribution payments were made to the Chapter 13 Trustee in the prior case. A review of Schedule A/B does not list any trust beneficiary interests. Dckt. 1 at 13-19, see Question 25 expressly stating that the Debtor have "no" interests in any trusts.

The Statement of Financial Affairs does not disclose any transfers to other persons within the two years prior to the commencement of this case. Presumably, paying medical expenses or other expenses of an ill son would be such transfers. *Id.* at 36-37.

Trustee states he is "uncertain" that $127,000.00 listed as Debtor's asset from a lawsuit is not actually inheritance of the type Debtor was ordered in the prior case to report and put towards the plan. No evidence is provided to the court clarifying the issue.

Though the court identified these serious good faith issues -diverting monies for a wedding and diverting the trust distribution -Debtor has elected to not file any further pleadings explaining why such conduct was reasonable and can be rebutted.

Debtor has not rebutted the presumption of bad faith, nor Debtor's conduct in choosing to fund a wedding and diverting trust distributions rather than funding the plan in the prior case. Quite possibly if Debtor had not elected to divert such monies, the Plan could have been performed, modified to address the son's injury, and the Trustee and creditors being left in the lurch.

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 pursuant to 11 U.S.C. § 362(c)(3)(B) filed by Michael and Bernadette Ambers, the Chapter 13 Debtors, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to extend the automatic stay, which terminates only as to Debtor pursuant to 11 U.S.C. § 362(c)(3)(A) thirty days after the commencement of this case, is denied. No determination is made by the court to the other provisions of 11 U.S.C. § 362(a) that apply to property of the bankruptcy estate.

34. 19-21042-E-13 LBG-2 | **MICHAEL/BERNADETTE AMBERS** | **FINAL HEARING RE: AMENDED MOTION TO EXTEND AUTOMATIC STAY**
3-15-19 [23]

The Motion To Extend Automatic Stay (Dckt. 23) was calendared twice in error; the present duplicative item is removed from the calendar.

35. **19-21516-E-13 RJ-2** **CHARLENE OJASCASTRO** **Richard Jare** **MOTION TO VACATE DISMISSAL OF CASE** **3-27-19 [17]**

DEBTOR DISMISSED: 03/25/2019

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on March 27, 2019. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

The Motion to Vacate is granted.

Charlene Ojacastro ("Debtor") filed the instant case on March 13, 2019. Dckt. 1. A Notice of

Incomplete Filing or Filing of Outdated Forms and Notice of Intent to Dismiss Case if Documents are Not Timely Filed (the "Filing Notice") was filed on March 13, 2019. Dckt. 8. The Filing Notice was served on Debtor on March 17, 2019. Dckt. 11.

Among other items, the Filing Notice required Debtor to file a Statement of SSN - Form 121 by March 20, 2019 to prevent automatic dismissal of the case. Dckt. 8.

An Order Dismissing Case for Failure to Timely File Documents was filed on March 25, 2019 after Debtor failed to file the Statement of SSN - Form 121. Dckt. 12. By the court's calculation, 3 days' notice was provided of the deadline, and 8 days passed before the Order dismissing the case was entered.

Debtor seeks to have the order dismissing the case vacated, per Federal Rule of Civil Procedure 60(b) and Federal Rule of Bankruptcy Procedure 9024.

On March 27, 2019, Debtor filed this instant Motion to Vacate. Debtor states with particularity in the Motion:

A. The court should have the power to review the clerk's dismissal for failure to timely file documents. Motion, Dckt. 17 at p. 2:17-18.

B. The BNC served notice on March 17, 2019. However, since the BNC is in Virginia notice was likely not received until March 20 or 21, 2019. *Id.*, at p. 2:27-3:4.

C. Because Debtor's counsel used Google Chrome and not Firefox, Debtor's counsel experienced issues in loading the Verification of Social Security number. As a result, the case was dismissed without any warning or phone call from the clerk. *Id.*, at p. 3:6-14.

D. Debtor hereby requests (within the Motion to Vacate) an extension to file the remaining filing documents. *Id.,* at p. 3:17-4:4.

E. Because the Debtor's proposed plan has already been filed, creditors will not be prejudiced by the Motion. *Id.*, at p. 4:15-18.

F. Debtor's counsel has not consented to notice by email and did not receive a courtesy phone call concerning the missing item. *Id*., at p. 4:20-27.

G. There is excusable neglect, including: Debtor's attorney was ill; an email confirmation appeared to confirm the documents were received; Debtor's counsel believed in good faith the document was filed; the document was in existence on February 19, 2015; Debtor's counsel has never presented such a Motion To Vacate. *Id.*, at p. 5:2-12.

H. The email confirmation from the court appeared to confirm that the deficiencies had been fulfilled when in fact they were not.

I. The attorney in good faith believed that deficient filing had been fulfilled.

J. The necessary documents were in fact in existence as of February 19, 2015.

K. The attorney has never before presented a motion before this court seeking relief from such excusable neglect.

L. The case was dismissed on 8 days' notice, not 21 days as required.

TRUSTEE'S RESPONSE

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response on April 1, 2019. Dckt. 20. Trustee argues General Order 18-01 allows the Clerk to dismiss, "after notice affording the debtor an opportunity to file the missing documents, a motion for extension of time, or a notice of hearing," where here Debtor received notice before the Order dismissing the case on March 25, 2019.

Trustee asserts further that Debtor does not actually argue which basis under Federal Rule of Civil Procedure 60(b) applies here, and that Debtor does not state when notice was actually received of the Filing Notice.

Trustee concludes Debtor has not pleaded sufficiently for the relief requested.

DEBTOR'S COUNSEL'S SUPPLEMENTAL DECLARATION

Debtor's Counsel filed a Supplemental Declaration of Debtor's Counsel on April 11, 2019. Dckt. 25.

Debtor's counsel states the original Motion was "sort of hokey," being derived from a template. The Supplemental Declaration then recounts much of the same facts asserted in the Motion, only adding that Debtor's counsel was ill and has never presented a Motion To Vacate before Department E. [FN. 1]

FN. 1. In the Supplemental Declaration counsel states that he did not have a "template" for this motion, but used a motion from another case - 15-21253. This was a case in which counsel filed a motion to vacate a dismissal due to counsel's illness. Every attorney, at one time or another ends up seeking relief due to an illness or error. To err is human (Alexander Pope; An Essay on Criticism, Part II , 1711), and to date all lawyers are humans.

APPLICABLE LAW

Federal Rule of Civil Procedure Rule 60(b), as made applicable by Federal Rule of Bankruptcy Procedure 9024, governs the reconsideration of a judgment or order. Grounds for relief from a final judgment, order, or other proceeding are limited to:

> (1) mistake, inadvertence, surprise, or excusable neglect;
>
> (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
>
> (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
>
> (4) the judgment is void;
>
> (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
>
> (6) any other reason that justifies relief.

FED. R. CIV. P. 60(b). A Rule 60(b) motion may not be used as a substitute for a timely appeal. *Latham v. Wells Fargo Bank, N.A.*, 987 F.2d 1199, 1203 (5th Cir. 1993). The court uses equitable principles when applying Rule 60(b). *See* 11 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 2857 (3d ed. 1998). The so-called catch-all provision, Federal Rule of Civil Procedure 60(b)(6), is "a grand reservoir of equitable power to do justice in a particular case." *Uni-Rty Corp. V. Guangdong Bldg., Inc.*, 571 F. App'x 62, 65 (2d Cir. 2014) (citation omitted). While the other enumerated provisions of Rule 60(b) and Rule 60(b)(6) are mutually exclusive, relief under Rule 60(b)(6) may be granted in extraordinary circumstances. *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 863 & n.11 (1988).

A condition of granting relief under Rule 60(b) is that the requesting party show that there is a meritorious claim or defense. This does not require a showing that the moving party will or is likely to prevail in the underlying action. Rather, the party seeking the relief must allege enough facts that, if taken as true, allow the court to determine if it appears that such defense or claim could be meritorious. 12 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶¶ 60.24[1]–[2] (3d ed. 2010); *see also Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984).

Additionally, when reviewing a motion under Rule 60(b), courts consider three factors: "(1) whether the plaintiff will be prejudiced, (2) whether the defendant has a meritorious defense, and (3) whether culpable conduct of the defendant led to the default." *Falk*, 739 F.2d at 463 (citations omitted).

DISCUSSION

As an initial policy matter, the finality of judgments is an important legal and social interest. The standard for determining whether a Rule 60(b)(1) motion is filed within a reasonable time is a case-by-case analysis. The analysis considers "the interest in finality, the reason for delay, the practical ability of the litigant to learn earlier of the grounds relied upon, and prejudice to other parties." *Gravatt v. Paul Revere Life Ins. Co.*, 101 F. App'x 194, 196 (9th Cir. 2004) (citations omitted); *Sallie Mae Servicing, LP v. Williams (In re Williams)*, 287 B.R. 787, 793 (B.A.P. 9th Cir. 2002) (citation omitted).

Here, Debtor has simply not pleaded enough for the court to work with. The court has been buried in a plethora of arguments. The court addresses the arguments as follows:

A. The court should have the power to review the clerk's dismissal for failure to timely file documents.

No authority is provided by Debtor supporting that the court can review an order dismissing the case after executed.

B. The BNC served notice on March 17, 2019. However, since the BNC is in Virginia notice was likely not received until March 20 or 21, 2019.

While this argument could be compelling, it is here somewhat uncredible. Debtor does not tell the court when the Filing Notice was received. Presumably it was at some point before the Order dismissing the case was entered, 8 days after the Filing Notice was served. Debtor however did not file the necessary documents until the same day as the Order dismissing the case.

C. Because Debtor's counsel used Google Chrome and not Firefox, Debtor's counsel experienced issues in loading the Verification of Social Security number. As a result, the case was dismissed without any warning or phone call from the clerk.

Debtor's counsel has not provided authority for the proposition he is entitled to telephone notice. Such is not the case. Additionally, in light of Debtor's other arguments (that no notice was received, and Debtor's counsel was also ill) this argument seems uncredible. Further, counsel does not provide the court with his policies and procedures the day after filing to insure what counsel thinks was filed was actually filed.

D. Debtor hereby requests (within the Motion to Vacate) an extension to file the remaining filing documents.

Confusingly, Debtor states the social security form was "the only" document missing. However, that document was simply due earlier–the other documents due March 25, 2019 and the social security form due March 20, 2019.

E. Because the Debtor's proposed plan has already been filed, creditors will not be prejudiced by the Motion.

The court agrees there would not be great prejudice in granting the Motion. However, that is not the sole inquiry (treating this a part of the prevailing on the merits) of Federal Rule of Civil Procedure 60.

G. There is excusable neglect, including: Debtor's attorney was ill; an email confirmation appeared to confirm the documents were received; Debtor's counsel believed in good faith the document was filed; the document was in existence on February 19, 2015; Debtor's counsel has never presented such a Motion To Vacate.

This point is not really fleshed out. Debtor's counsel does not seem to indicate that his illness was the cause of the error here. That would contradict the earlier argument that notice was not provided early enough. Further, no description as to the extent of the illness is provided. Possibly, Debtor's counsel could provide a doctor's note establishing illness.

H. The email confirmation from the court appeared to confirm that the deficiencies had been fulfilled when in fact they were not.

No email was provided to the court. This assertion seems to contradict Debtor's counsel's affirmative assertion that he does not consent to notice by email.

I. The attorney in good faith believed that deficient filing had been fulfilled.

J. The necessary documents were in fact in existence as of February 19, 2015.

It is unclear what this point adds to the failure to *file* the document.

K. The case was dismissed on 8 days' notice, not 21 days as required.

As the Trustee discusses, General Order 18-01 allows the Clerk to dismiss, "after notice affording the debtor an opportunity to file the missing documents, a motion for extension of time, or a notice of hearing." Here, 8 days passed before the Order dismissing the case was entered. Clearly there was some opportunity to request an extension or file the document. Debtor has not argued what notice would have been sufficient.

Granting of Motion

Debtor does not have a series of recently filed and dismissed cases. Debtor has no other bankruptcy filings in the past five years (there were two cases filed and dismissed in 2013, for one of which Debtor's current counsel was Debtor's counsel in that case). Counsel and Debtor have acted promptly in seeking to vacate the dismissal. Schedules, Statement of Financial Affairs, and Plan have been filed.

There is sufficient mistake or excusable neglect (this not being a routine for counsel) to vacate the order dismissing this case.

The Motion is granted and the Order of this court dismissing the case filed on March 25, 2019 (Dckt. 12) is vacated.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Vacate filed by Charlene Joy Ojascastro ("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 Order of this court dismissing the case filed on March 25, 2019 (Dckt. 12) is vacated.
>
> **IT IS FURTHER ORDERED** that Schedules, Statement of Financial Affairs, and other documents specified in the Notice of Incomplete Filing (Dckt. 8) filed after the dismissal of this Case and prior to this order vacating the dismissal are deemed to timely filed for purposes of the Notice of Incomplete Filing.

36. 19-20125-E-13 ROBERT/DONNA DECELLE
Peter Macaluso

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY CREDITOR FORD MOTOR CREDIT COMPANY, LLC
2-28-19 [33]

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).

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on February 28, 2019. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is xxxxxxxxx.

Ford Motor Credit Company, LLC ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

A. The plan fails to provide for full payment of Creditor's secured claim; Debtor seeks to value Creditor's collateral at $14,000.00 through a motion to value set to be heard April 2, 2019.

B. Debtor's proposed plan provides for interest on Creditor's secured claim at the rate of 4% per annum. Based on the case history Creditor objects

to any proposed Plan which fails to pay Creditor's secured claim at less than 6.5% interest.

C. Debtor's proposed plan payments are $2,160.00 where Debtor's disposable income is only $2,020.00.

D. Debtor's plan is not proposed in good faith because this is Debtor's second (recent) case. [FN. 1]

Dckt. 33.

FN. 1. The 100 page "Objection" filed by Ford Motor Credit Company, LLC does not comply with the basic pleading rules in the Eastern District of California. The Motion, Points and Authorities, Opposition, Objection, Each Declaration, and the Exhibits (which exhibits may be combined into a single exhibit document), must all be filed as separate pleadings. L.B.R. 9004-2, 9014-1(d). Here, the 100 page electronic document is an Objection-Request for Judicial Notice-Factual Statement- Grounds-Points and Authorities-Legal Argument-Declaration-17 Exhibits. In light of counsel's firm regularly practicing in the Eastern District of California and well aware of the Rules, such gross failure to comply with the Rules does not appear to be inadvertent, but instead intentional.

APRIL 2, 2019 HEARING

At the April 2, 2019 hearing the court, in light of a stipulation entered by the parties (Dckt. 64), continued the hearing to April 16, 2019. Civil Minutes, Dckt. 69.

DISCUSSION

Creditor argues that the proposed plan does not account for the full amount of its claim becuase Debtor relies on an incorrect valuation of Creditor's collateral. Debtor has a Motion To Value Creditor's secured claim set to be heard the same day as the hearing on this Objection. Dckt. 37.

At the hearing, xxxxxxxxxxxxxx.

Creditor also objects to the confirmation of the Plan on the basis that the Plan calls for adjusting the interest rate on its loan with Debtor to 4 percent. Creditor's claim is secured by a 2013 Ford F150. Creditor argues that this interest rate is outside the limits authorized by the Supreme Court in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). In *Till*, a plurality of the Court supported the "formula approach" for fixing post-petition interest rates. *Id.* Courts in this district have interpreted *Till* to require the use of the formula approach. *See In re Cachu*, 321 B.R. 716 (Bankr. E.D. Cal. 2005); *see also Bank of Montreal v. Official Comm. of Unsecured Creditors (In re American Homepatient, Inc.)*, 420 F.3d 559, 566 (6th Cir. 2005) (*Till* treated as a decision of the Court). Even before *Till*, the Ninth Circuit had a preference for the formula approach. *See Cachu*, 321 B.R. at 719 (citing *In re Fowler*, 903 F.2d 694 (9th Cir. 1990)).

The court agrees with the court in *Cachu* that the correct valuation of the interest rate is the prime rate in effect at the commencement of this case plus a risk adjustment. Creditor argues the interest rate should be 5.5 percent (the national prime rate), plus an additional 1 percent due to Debtor having a prior case dismissed for failure to maintain payments, and Debtor having less disposable income than their prior case. The court agrees that on the evidence presented a rate of 6.5 percent is appropriate. Therefore, the objection to confirmation of the Plan on this basis is sustained. *See* 11 U.S.C. § 1325(a)(5)(B)(ii).

Creditor argues that the failure to provide the appropriate claim and interest amounts demonstrate the plan is not feasible.

Creditor further argues that the case was not filed in good faith for the following reasons:

1. Debtor filed this case immediately after learning the prior case would be dismissed (and before the order dismissing case was entered).

2. Debtor filed this second case to receive the benefit of the Automatic Stay.

3. Debtor did not oppose the Trustee's Motion To Dismiss in the prior case.

4. Debtor's unsecured debt increased from the prior to this present case.

5. Debtor has not had a positive change in schedules since the prior case was dismissed for failure to make plan payments.

While Creditor finds the filing of a second bankruptcy "bad faith," the above grounds do not so indicate, with the possible exception of the increase in unsecured debt. As noted by the court in dismissing the prior case, Debtor did pay $20,270.00 to fund the Plan in the prior case. 16-2745; Civil Minutes, Dckt. 121. On its $24,695.44 secured claim, Creditor was paid $6,441.22 for principal and $1,511.31 for interest. *Id.*; Trustee's Final Report, Dckt. 129.

At the hearing, xxxxxxxxxxxxxx.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by Ford Motor Credit Company, LLC ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Confirmation of Plan is xxxxxxxxxxxx.

37.	**19-20125-E-13** **PGM-2**	**ROBERT/DONNA DECELLE** **Peter Macaluso**	**CONTINUED MOTION TO VALUE COLLATERAL OF FORD MOTOR CREDIT COMPANY, LLC** **3-1-19 [37]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on March 1, 2019 By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of Ford Motor Credit Company, LLC ("Creditor") is xxxxxxxxxxxxxx.

The Motion filed by Robert A. DeCelle, III and Donna Marie DeCelle ("Debtor") seeks to value the secured claim of creditor, Ford Motor Credit Company, LLC ("Creditor"), is accompanied by Debtor's declaration. Debtor is the owner of a 2013 Ford F150 ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $14,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Debtor filed the Declaration of Debtor in support of the Motion. Declaration, Dckt. 40. Debtor's Declaration provides testimony under penalty of perjury the following items on the Vehicle are in need of repair:

A. Front end suspension

B. Noises in rear-end

C. Back brakes

D. Electrical broke on driver door

E. Damaged leather seats

F. Minor body damage

Debtor's Declaration, executed on January 9, 2019, states further the Vehicle has 72,000.00 miles and a value of $14,000.00.

Creditor filed a Proof of Claim, No. 1 on January 14, 2019 asserting the Vehicle has a value of $17,615.03.

CREDITOR'S OPPOSITION

Failure To Meet Local Rules

On March 15, 2019, Creditor filed a forty-five page pleadings titled:

OPPOSITION TO DEBTORS' MOTION TO VALUE COLLATERAL OF FORD MOTOR CREDIT COMPANY, LLC;
DECLARATION OF JACKLYN LARSON IN SUPPORT THEREOF

Dckt. 49. The Opposition consists of multiple documents filed as one document, consisting of:

1. Opposition

2. Declaration of Jacklyn Larson

3. Exhibit "A," Debtor's Schedules A/B

4. Exhibit "B," Debtor's Schedule D

5. Exhibit "C," Creditor's Proof of Claim

6. Exhibit "D," NADA valuation for the Vehicle based on 45,000.00 miles

7. Exhibit "E," NADA valuation for the Vehicle based on 72,000.00 miles

8. A Kelley Blue Book valuation for the Vehicle filed as "Exhibit F"

9. An Autotrader.com valuation for the Vehicle filed as "Exhibit G"

Merging these multiple documents into one mega pleading is not permitted under the Local Bankruptcy Rules for the Eastern District of California. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." LOCAL BANKR. R. 9004-2(c)(1). Counsel is reminded of the court's expectation that documents filed with this court comply as required by Local Bankruptcy Rule 9004-1(a). Failure to comply is cause to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

These document filing rules exist for a very practical reason. Operating in a near paperless environment, the motion, points and authorities, declarations, exhibits, requests for judicial notice, and other pleadings create an unworkable electronic document for the court (some running hundreds of pages). It is not for the court to provide secretarial services to attorneys and separate an omnibus electronic document into separate electronic documents that can then be used by the court.

Summary of Opposition &
Supporting Documents

In its Opposition Creditor disputes several of Debtor's factual assertions. First, Creditor notes that Debtor in their Declaration (Dckt. 40) state under penalty of perjury the Vehicle has 72,000.00 miles, whereas the Schedules listed the Vehicle as having only 45,000.00 miles. Second, Creditor asserts the retail value of the Vehicle is somewhere in the $20,000.00+ range, leaving Creditor's claim fully secured.

As to Creditor's second point, several values are offered. Creditor filed in support of its Opposition the Declaration of Jacklyn Larson. The Larson Declaration references the NADA guides filed as Exhibits D and E.

Exhibit D is a NADA valuation which values the Vehicle at $27,625.00 if it has 45,000.00 miles. *Id.* Exhibit E is a NADA valuation which values the Vehicle at $25,425.00 if it has 72,000.00. *Id.*

Creditor also provides a Kelley Blue Book valuation purporting a typical listing price of $24,226.00, and an Autotrader.com listing printout which lists various prices for similar vehicles ranging above $20,000.00. While these two Exhibits were authenticated by the Larson Declaration, no exception to the rule against hearsay was established.

Creditor's position is that despite needed repairs identified by Debtor, the Vehicle is worth enough to fully secure Creditor's claim. Creditor does not actually assert a value, but merely requests the Motion be denied.

TRUSTEE'S RESPONSE

On March 19, 2019, David Cusick, ("the Chapter 13 Trustee") filed a Response, Dckt. 41. Trustee notes Creditor in its Proof of Claim, No. 1, values the Vehicle at $17,615.03.

Trustee also notes that Debtor in a prior case filed in 2016 listed the Vehicle having mileage of 45,000.00. *See* Schedule A/B, Bankr. E.D. Cal. No. 16-1627454, Dckt. 1.

DEBTOR'S REPLY

Debtor filed a Reply to Creditor's Opposition and Statement of Material Dispute of Fact on March 26, 2019. Dckts. 60, 61. Debtor's Reply states the following:

1. Creditor's valuation is based on publications and not an actual appraisal of the Vehicle. The parties have arranged for Creditor to inspect the Vehicle and therefore Debtor requests the hearing on the Motion be continued.

2. Debtor has based his valuation on lay testimony.

3. There is a material dispute as to the value of the Vehicle.

Debtor requests the Creditor's "Objection be denied."

APRIL 2, 2019 HEARING

At the April 2, 2019 hearing, the parties having filed a Stipulation for continuance (Dckt. 64) the court continued the matter to be heard on the April 16, 2019 hearing date. Order, Dckt. 71.

The court further ordered Peter Macaluso, Esq., counsel for Debtor, and Randall Mroczynski, Esq., counsel for Ford Motor Credit Company, LLC, and each of them, to appear at the hearing–telephonic appearances permitted. *Id*.

Additionally, the court has suspended application of Federal Rule of Civil Procedure 41(a)(1)(A) and Federal Rules of Bankruptcy Procedure 7041 and 9014 to this Contested Matter. *Id.*

DISCUSSION

Creditor here does not actually advance a particular value for the Vehicle. Several values are thrown at the court, some established through evidence and some not, some of the retail value of the Vehicle and some not.

Looking at the NADA clean retain value of $25,425 (Exhibit "E") and considering the repairs identified by Debtor, it is clear that such vehicle sitting on a dealer's lot, in that condition, the retail sales price of such damaged vehicle would be substantially less (not merely the repair costs less).

It appears that Creditor, not in the context of this litigation, may have stated a more accurate value under penalty of perjury when it filed Proof of Claim, No. 1. Creditor states under penalty of perjury that the Vehicle had a value of only $17,615.03.

Debtor now asserts that the value is only $3,615.03 less than Creditor has previously stated under penalty of perjury in Proof of Claim No.1.

The court continued the hearing to allow Creditor time to inspect the Vehicle. No supplemental pleadings were filed since the prior hearing.

At the hearing, the parties reported **xxxxxxxxx**

Also discussed during the prior hearing was Creditor's gross noncompliance with the rules for the basic preparation of documents (despite counsel's firm having appeared regularly in the Eastern District of California over the past many years), and Creditor's position the Motion can be "denied" when it is necessary for the court to value the claim.

At the hearing, Creditor explained xxxxxxxxxxxxxx.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Value Collateral and Secured Claim filed by Robert A. DeCelle, III and Donna Marie DeCelle ("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 **xxxxxxxxxxxxxx**

38. **19-20125-E-13** **ROBERT/DONNA DECELLE** **CONTINUED MOTION TO VALUE COLLATERAL OF GOLDEN 1 CREDIT UNION**
PGM-3 **Peter Macaluso** **3-5-19 [44]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on March 5, 2019. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of Golden 1 Credit Union ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $10,500.00.

The Motion filed by Robert DeCelle and Donna DeCelle ("Debtor") to value the secured claim of Golden 1 Credit Union ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2015 Kia Sorento ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $10,500.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Debtor's Declaration was filed in support of the Motion. Dckt. 47. Debtor's Declaration presents testimony of required repairs for the Vehicle (which Debtor considered in the valuation),

described as follows:

A. Back bumper
B. Drivers door
C. Front end leakage
D. Suspension
E. Damaged seats
F. Stained carpet

Id.

CREDITOR'S PROOF OF CLAIM

Creditor filed Proof of Claim, No. 5 on January 18, 2019. Creditor asserts a fully secured claim of $32,616.31. Creditor breaks down the amounts as follows:

Value of property:	$_____
Amount of the claim that is secured:	$ 32616.31
Amount of the claim that is unsecured:	$ 0.00

Question 9, Proof of Claim, No. 5, Official Claims Registry.

DISCUSSION

Here, Creditor has filed a Proof of Claim, which is *prima facie* evidence as to the value of the secured claim.

It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). As part of its burden of producing substantial evidence to rebut the presumptive validity, the objecting party bears the burden of producing substantial evidence as to the value of the collateral securing any portion of the claim. *In re Austin,* 583 B.R. 480, 483 (B.A.P. 8th Cir. 2018). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and requires financial information and factual arguments. *Id.* Notwithstanding the prima facie validity of a proof of claim, the ultimate burden of persuasion is always on the claimant. *In re Holm*, 931 F.2d at p. 623.

Here, Debtor's Declaration provides the following testimony:

1. Debtor has personal knowledge of the Vehicle based on regular use

thereof. Declaration ¶ 3, Dckt. 47.

2. Debtor performed research using local newspapers and trade articles and websites. *Id.*, ¶ 4.

3. The Vehicle is in fair condition with 78,000 miles. *Id.*, ¶¶ 5-6.

4. The Vehicles back bumper, driver's door, front end leakage, suspension, damaged seats, and stained carpets all need repairs. *Id.*, ¶ 7.

5. The Vehicle's retail value on the date of filing is $10,500.00. *Id.*, ¶ 8.

Debtor's Declaration establishes several factual details supporting Debtor's valuation. Therefore, Debtor presented substantial evidence to rebut Credit's Proof of Claim. *In re Austin,* 583 B.R. at p. 483.

In contrast to Debtor's detailed testimony, Creditor's Proof of Claim does not provide any factual support or assert an actual value. The Proof of Claim states barely the claim is fully secured in the amount of $32,616.31. Proof of Claim, No. 5.

Reviewing the retail sales contract attached to the Proof of Claim, the purchase price of the Vehicle was $37,849.00. *Id*. At the time of purchase on May 13, 2014, the Vehicle has 15 miles. *Id*.

Creditor is stating under penalty of perjury that the value of the Vehicle decreased only $5,232.69 over roughly five years and 78,000 miles of use. Such a statement does not appear credible.

The lien on the Vehicle's title secures a purchase-money loan incurred on May 13, 2014, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $32,616.31. Creditor's secured claim is determined to be in the amount of $10,500.00, the value of the collateral. *See* 11 U.S.C. § 506(a). Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Value Collateral and Secured Claim filed by Robert and Donna DeCelle ("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 Golden 1 Credit Union ("Creditor") secured by an asset described as a 2015 Kia Sorento ("Vehicle") is determined to be a secured claim in the amount of $10,500.00, and the balance of the claim is a general unsecured

claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $10,500.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

39. 18-27720-E-13 TLW-3 — DAVID RYNDA, Tracy Wood — AMENDED MOTION TO AVOID LIEN OF DAVID HICKS 4-3-19 [185]

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 Not Provided.

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

The Motion to Avoid Judicial Lien is xxxxx.

The debtor, David Rynda ("Debtor") filed this Motion on April 3, 2019 seeking to avoid the judicial lien of creditor David Hicks ("Creditor"). Creditor's lien is secured by Debtor's real property commonly known as 9436 Windrunner Ln, Elk Grove, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $73,387.16. See Abstract of Judgment, Exhibit E, Dckt. 187 at 26. An Abstract of Judgment was recorded with Sacramento County on December 15, 2015 that encumbers the Property. *Id.* FN.1.

FN.1. Debtor attaches several recorded abstracts. Exhibits D, F, and G are abstracts for judgments in the Alameda, Contra Costa, and Santa Clara counties. The Property here is located in Sacramento county. Thus, the other recorded abstracts are not relevant.

Insufficient Service

The Proof of Service filed on April 3, 2019, states the following:

> "The above documents have been filed with the Clerk of the Court for the United States Bankruptcy Court (Eastern District of California) using the CM/ECF system, which will send notification of such filing to all counsel of record who receive CM/ECF notifications, including David Hicks."

Proof of Service, Dckt. 189.

Movant does not provide argument explaining how the aforementioned service complies with Federal Rules of Bankruptcy Procedure 9014 and 7004, and Federal Rule of Civil Procedure 4.

At the hearing, xxxxxxxxxxxxxx.

GROUNDS STATED IN MOTION AND DEBTOR'S DISPUTED INTEREST IN THE PROPERTY

The Motion states with particularity (Fed. R. Bankr. P. 9013) the following grounds upon which the requested relief is based:

1. As shown in Schedule A of the filed case, the Debtor has an interest in the Property. Motion ¶ 3, Dckt. 185.

2. Debtor asserts the value of the Property is $399,334.00 at the time of filing. *Id.*, ¶ 4.

3. Debtor has claimed an exemption in the amount of $175,000.00 in the Property. *Id.,* ¶ 5.

4. Creditor's judicial lien impairs the $124,864.28 exemption claimed by the Debtor. *Id.*, ¶ 10.

What the Motion leaves out is that Debtor's interest in the Property is disputed. On February 11, 2019, Debtor filed a Complaint seeking declaratory relief, quiet title, and objection to relief from stay filed by the defendant, Elina M. Machado ("AP Defendant"). *Rynda v. Machado et al*, Bankr. E.D. Cal. No. 19-02023, Complaint, Dckt. 1.

Debtor has not explored what if any effect the outcome of this Adversary Proceeding would have on the present Motion.

At the hearing, xxxxxxxxxxxxxx.

Total Liens on the Property

The Motion states that the total superior liens on the Property above the Creditor's judicial lien total $376,082.56. However, it is unclear whether Debtor is running through the correct calculations here.

Debtor has amended Schedule D twice since filing this case on December 12, 2018.

Debtor's first Schedule D was filed December 26, 2018. Dckt. 12. Debtor listed the following secured claims:

Creditor	Claim Amount	Type of Lien	Other Info
Erika Leyva	$10,000.00	DOT	(Debtor paying since 2014 but not obligated) Incurred 11/30/18
Erika Leyva	$15,000.00	DOT	(Debtor paying since 2014 but not obligated) Incurred 11/30/18
John J. Rynda	$100,000.00	DOT	(Debtor paying since 2014 but not obligated) Incurred 11/30/18
Lakeside Community Owner's Association	$3,618.44	Assessment Lien	(Debtor paying since 2014 but not obligated) Incurred 8/24/2017
Ocwen Loan Servicing, LLC	$169,552.45	DOT	(Debtor paying since 2014 but not obligated)
U.S. Department of Housing and Urban Dev	$66,903.08	DOT	(Debtor not obligated and not paying)

Debtor filed the First Amended Schedule D on January 27, 2019. Dckt. 39. There, Debtor removed statements that he was paying on certain loans since 2014 although not obligated. The First Amended Schedule also changes the amount owing to Lakeside Community Owner's Association to $4,731.00., and clarifies the claim of Ocwen Loan Servicing, LLC was incurred in 2014.

Debtor filed a Second Amended Schedule D on February 16, 2019. Dckt. 94. The Second Amended Schedule adds the following claim:

Consolidated Utilities Billing & Service	$2,642.47	Statutory Lien	Incurred 2014-2018

Debtor states in the Motion that all the liens listed on Second Amended Schedule D are superior to the Creditor's lien. Dckt. 185. Debtor totals the liens to be $376,082.56.

However, at a glance it is clear that the judgment lien of Consolidated Utilities Billing & Service is junior, and would be avoided first in a 11 U.S.C. § 522(f) avoidance action.

Additionally, several of the secured claims (including a $100,000.00 DOT apparently held by a family member) are stated on Schedule D to have been incurred or the lien given in 2018, less than a month before filing the bankruptcy case. Such secured claims would appear to be fraudulent conveyances or preferential transfers that the Chapter 13 Debtor has the fiduciary duty of a trustee to avoid for the benefit of the bankruptcy estate and creditors pursuant to 11 U.S.C. §§ 547 and 548. [FN. 1]

FN. 1. If there are avoidable transfers, whether as a preference or a fraudulent conveyance, such transfers are "preserved" for the benefit of the bankruptcy estate and creditors pursuant to 11 U.S.C. § 551. Avoided transfers, such as an avoided transfer in the form of a deed of trust, come ahead of a homestead exemption, just as would the consensual deed of trust.

Review of Claims Filed

No proofs of claims have been filed by:

Erika Leyva;

John J. Rynda;

U.S. Department of Housing and Urban Dev;

or

Consolidated Utilities Billing & Service.

Other than the Schedules, Debtor offers no evidence of these obligations, the liens relating

thereto, or their respective priority as to Debtor's interest in the Property. It may be that the liens encumber interests, if any, of other persons in the property and not the Debtor's interest that is property of the bankruptcy estate.

At the hearing, the Debtor stated xxxxxxxxxxxxxx.

An order substantially in the following form shall be prepared and issued by the court:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by David Rynda ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is ~~denied without prejudice.~~

FINAL RULINGS

40. **19-20924-E-13 DPC-1** **KEVIN KENNEDY** **Mikalah Liviakis**

MOTION FOR DENIAL OF DISCHARGE OF DEBTOR UNDER 11 U.S.C. SECTION 727(A)
3-19-19 [13]

Final Ruling: No appearance at the April 16, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on March 19, 2019. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion for Denial of Discharge has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4004(a). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Denial of Discharge is granted.

David P. Cusick, the Chapter 13 Trustee, ("Objector") filed the instant Motion for Denial of Debtor's Discharge on March 19, 2019. Dckt. 13.

Objector argues that Kevin Kennedy ("Debtor") is not entitled to a discharge in the instant bankruptcy case because Debtor previously received a discharge in a Chapter 7 case.

Debtor filed a Chapter 7 bankruptcy case on August 23, 2017. Case No. 17-25576-A-7[1]. Debtor subsequently received a discharge on October 23, 2018. Order of Discharge, Case No. 17-25576-A-7, Dckt. 100.

FN.1. In the Motion the Chapter 7 Trustee states the prior case number is “17-25571-A-7." A review of the court’s docket shows the correct case number is 17-25576-A-7.

The instant case was filed under Chapter 13 on February 15, 2019.

11 U.S.C. § 727(a)(8) provides that a court shall not grant a discharge if a debtor has received a discharge in a case filed under chapter 7 or 11 within eight years before the filing date of the instant case. 11 U.S.C. § 727(a)(8).

Here, Debtor received a discharge under 11 U.S.C. § 727 on October 23, 2018, which is less than eight years preceding the date of the filing of the instant case. Case No. 17-25576-A-7, Dckt. 100. Therefore, pursuant to 11 U.S.C. § 727(a)(8), Debtor is not eligible for a discharge in the instant case.

The Motion is granted. Upon successful completion of the instant case (Case No. 19-20924), the case shall be closed without the entry of a discharge, and Debtor shall receive no discharge in the instant case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Denial of Discharge filed by David P. Cusick, the Chapter 13 Trustee, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Motion for Denial of Discharge is granted, and upon successful completion of the instant case, Case No. 19-20924, the case shall be closed without the entry of a discharge.

41. **19-20370-E-13 DPC-1** | **ANDREY KOLESNIKOV** **Pro Se** | **OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS** **3-4-19 [36]**

Final Ruling: No appearance at the April 16, 2019, hearing is required.

The case having previously been dismissed, the Objection is overruled as moot.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Debtor's Claim of Exemption having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is overruled as moot, the case having been dismissed.

42. **19-20880-E-13 DWE-1** **LAURA/DONALD ENGLAND** **MOTION TO CONFIRM TERMINATION OR ABSENCE OF STAY**
3-6-19 [17]

Final Ruling: No appearance at the April 16, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on March 6, 2019. By the court's calculation, 41 days' notice was provided. [FN.1.] 28 days' notice is required.

FN.1. Debtor filed its Original Notice on March 6, 2019 and provided notice the same day. Dckts. 19, 22. The Original Notice sought to set the hearing on the Motion for April 4, 2019 at 10:00a.m. No such hearing date/time existing, the court issued a Memo To File Re: Calendar Correction informing Debtor the Motion would not be calendared until an Amended Notice corrected the defect. Dckt. 23.

Pursuant to the written instruction of the court, Debtor filed an Amended Notice seeking to set the hearing for April 16, 2019. Dckt. 25.

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

The Motion To Confirm Termination Or Absence of the Automatic Stay is granted.

HSBC Bank USA, N.A. as Trustee ("Movant") seeks an order confirming the termination or absence of automatic stay with respect to Laura Elizabeth England and Donald Lee England's ("Debtor") real property commonly known as 7235 Larchmont Drive, North Highlands, California ("Property").

Movant asserts that this is Debtor's third case pending in the preceding year, the two prior cases having been dismissed.

Debtor filed Debtor's first case on August 2, 2017; that case was dismissed on May 31, 2018 for delinquency in plan payments and unreasonable delay in failing to propose a plan. Order, Bankr. E.D. Cal. No. 17-25115, Dckt. 66.

Debtor's second case was filed June 25, 2018, and dismissed on November 20, 2018 after Debtor failed to confirm an Amended Plan as required by a conditional Order. Order, Bankr. E.D. Cal. No. 18-23980, Dckt. 29.

The present case was filed February 14, 2019–less than a year after the first case was dismissed.

CHAPTER 13 TRUSTEE'S RESPONSE

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response on April 1, 2019. Dckt. 36. Based on the facts, the Trustee does not interpose any objection.

DISCUSSION

The Bankruptcy Code Provides the following:

> if a single or joint case is filed by or against a debtor who is an individual under this title, and if 2 or more single or joint cases of the debtor were pending within the previous year but were dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b), the stay under subsection (a) shall not go into effect upon the filing of the later case

11 U.S.C. § 362(c)(4)(i). The Bankruptcy Code further provides that on request of a party in interest, the court shall promptly enter an order confirming that no stay is in effect. 11 U.S.C. § 362(c)(4)(ii)

As discussed, s*upra*, this is Debtor's third case pending within the previous year. Therefore, no stay went into effect and the Motion is granted.

The court shall issue an order confirming no automatic stay is in effect as to Debtor or the Estate.

No other or additional relief is granted by the court.

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

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

The Motion for Relief from the Automatic Stay filed by HSBC Bank USA, N.A. as Trustee ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that in the automatic stay provisions of 11 U.S.C. § 362(a) are not in effect as to the debtors, Laura Elizabeth England and Donald Lee England, or property of the bankruptcy Estate in Case No. 19-20880.

43. **18-27291-E-13** **MARIA CALDERAS** **MOTION TO CONFIRM PLAN**
TOG-1 **Thomas Gillis** **3-11-19 [26]**

Final Ruling: No appearance at the April 16, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 11, 2019. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Maria Cristina Calderas ("Debtor") has provided evidence in support of confirmation. David Cusick ("the Chapter 13 Trustee") filed a Non-Opposition March 28, 2019. Dckt. 32 The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by Maria Cristina Calderas ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Debtor's Amended Chapter 13 Plan filed on March 11, 2019, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick ("the Chapter 13 Trustee") for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.