
The Objection to Confirmation of Plan is sustained.

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

- A. Debtor is delinquent in Plan payments.

DISCUSSION

Trustee’s objection is well-taken.

Delinquency

Debtor is \$1,500.00 delinquent in plan payments, which represents multiple months of the \$750.00 plan payment. Before the hearing, another plan payment will be due. According to Trustee, the Plan in § 2.01 calls for payments to be received by Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Trustee indicates that there is a payment pending since May 1, 2020 that has not yet cleared.

At the hearing, **XXXXXXXXXX**

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

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor’s Attorney on May 6, 2020. By the court’s calculation, 27 days’ notice was provided. 14 days’ notice is required.

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

-----.

The Objection to Confirmation of Plan is sustained.

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

- A. Debtor is delinquent on plan payments.
- B. Debtor may be unable to afford the payment plan.
- C. The plan is not feasible.
- D. Debtor has failed to provide a copy of his Federal Income Tax Return.
- E. Debtor has failed to file personal taxes for 2018 and 2019; as well as employee taxes for 2019 and 2020.

DISCUSSION

Trustee's objections are well-taken.

Delinquency

Debtor is \$12,699.46 delinquent in plan payments, which represents multiple months of the \$6,200.00 plan payment. Before the hearing, another plan payment will be due. According to Trustee, the Plan in § 2.01 calls for payments to be received by Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Failure to Afford Plan Payment

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). It is unclear whether Debtor is still receiving sufficient income from the business to fund a plan after the court granted Creditor Laguna Pavilion's motion for relief from the automatic stay to pursue their rights under the Termination Agreement, where Debtor was to stop operating under the Wingstop name as of December 2018. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Plan is Not Feasible

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Chapter 13 Trustee, the Plan will complete in 342 months due to filed claims vastly exceeding the amounts accounted for in Debtor's plan. The Internal Revenue Service filed a priority claim in the amount of \$1,409,298.64, of which \$839,945.50 is priority and \$569,353.14 is unsecured. Proof of Claim 20-1. Debtor's plan only accounts for a priority debt of \$88,263.84 and unsecured debt in the amount of \$367,248.24.

Moreover, the mortgage claim filed is for \$50,871.40 of arrears with an ongoing mortgage of \$429,214.90. Claim 7-1. Debtor's plan proposes a \$700.00 monthly payment to mortgage arrears with an on-going mortgage payment of \$2,639.00. Trustee calculates that the monthly payment to the arrears would need to increase to no less than \$850.00 to be paid within 60 months.

The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d). Thus, the Plan may not be confirmed.

Failure to Provide Tax Returns

The Chapter 13 Trustee argues that Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A)(i); FED. R. BANKR. P. 4002(b)(3). Debtor has failed to provide the tax transcript. That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Failure to File Tax Returns

Debtor admitted at the Meeting of Creditors that the Debtor's personal federal income tax

return for the 2018 and 2019 tax years have not yet been filed. Additionally, employee taxes have not been filed for years 2019 and 2020. Filing of the return is required. 11 U.S.C. §§ 1308, 1325(a)(9). Failure to file a tax return is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

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

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, and Office of the United States Trustee on April 30, 2020. By the court’s calculation, 33 days’ notice was provided. 14 days’ notice is required.

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

-----.

The Objection to Confirmation of Plan is sustained.

HSBC Bank USA, National Association as Trustee for Wells Fargo Home Equity Asset-Backed Securities 2005-2 Trust, Home Equity Asset-Backed Certificates, Series 2005-2 (“Creditor”) holding a secured claim opposes confirmation of the Plan on the basis that:

- A. Debtor’s plan fails to provide for the curing of the default on the Creditor’s claim.

DISCUSSION

Creditor’s objections are well-taken.

Failure to Cure Arrearage of Creditor

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

a timely proof of claim in which it asserts \$50,871.40 in pre-petition arrearage. The Plan does not propose to cure those arrearage in their entirety. The Plan has provided for \$46,118.39 in arrearage. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearage.

Failure to Afford Plan Payment / Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). According to the plan, Debtor will make monthly payments of \$6,200.00 for 60 months to the Trustee for a base plan amount of \$372,000.00. However, according to Debtor's Schedules, Debtor has a monthly net income of only \$6,200.34. This amount will be insufficient to fund the plan when accounting for the additional \$4,753.01 still owed to Creditor. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

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

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

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

The Objection to the Chapter 13 Plan filed by HSBC Bank USA, National Association as Trustee for Wells Fargo Home Equity Asset-Backed Securities 2005-2 Trust, Home Equity Asset-Backed Certificates, Series 2005-2 ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on March 23, 2020. By the court’s calculation, 71 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.

Honda Lease Trust (“Creditor”) holding a secured claim opposes confirmation of the Plan on the basis that:

- A. Debtor is attempting to exercise his lease’s purchase option as a financing contract without Creditor’s approval.

DISCUSSION

Creditor’s objection is well-taken.

The proposed Plan in this case merely provides for Movant in Class 2 as a creditor having a secured claim in the amount of \$29,816.91, which is to be amortized over 60 months with 7% interest, yielding a monthly payment of \$591.00. The Plan does not provide for Debtor exercising an option to purchase the Vehicle.

Schedule G is one in which a debtor lists executory contracts and unexpired leases. None are listed on Schedule G filed by Debtor (Dckt. 12. at 19), which is consistent with Movant asserting that the lease expired in 2019.

Creditor also filed a Motion for Relief from the Automatic Stay which was granted on May 12, 2020. Dckt. 90, 91.

Though relief from the stay was granted, the proposed plan (which would be the modified contract between Debtor and Creditor) attempts to provide for treatment of the claim.

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 Honda Lease Trust (“Creditor”) holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on May 7, 2020. By the court’s calculation, 27 days’ notice was provided. 14 days’ notice is required.

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

The Motion to Value Collateral and Secured Claim of Santander Consumer USA, Inc. (“Creditor”) is granted, and Creditor’s secured claim is determined to have a value of \$4,000.00.

The Motion filed by Valerie Ann Eickhof (“Debtor”) to value the secured claim of Santander Consumer USA, Inc. (“Creditor”) is accompanied by Debtor’s declaration. Declaration, Dckt. 27. Debtor is the owner of a 2009 Volkswagen Routan (“Vehicle”). Debtor seeks to value the Vehicle at a replacement value of \$4,000.00 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).

DISCUSSION

The lien on the Vehicle’s title secures a purchase-money loan incurred on July 2013, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$15,704.53. Proof of Claim, No. 9-1. Therefore, Creditor’s claim secured by a lien on the asset’s title is under-collateralized. Creditor’s secured claim is determined to be in the amount of \$4,000.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal

Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion to Value Collateral and Secured Claim filed by Valerie Ann Eickhof (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Santander Consumer USA, Inc. (“Creditor”) secured by an asset described as 2009 Volkswagen Routan (“Vehicle”) is determined to be a secured claim in the amount of \$4,000.00, 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 \$4,000.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

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

Below is the court’s tentative ruling, rendered on the assumption that there will be no opposition to the 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 May 6, 2020. By the court’s calculation, 27 days’ notice was provided. 14 days’ notice is required.

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

-----.

The Objection to Confirmation of Plan is overruled.

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

- A. Debtor relies on the valuation of a claim, but no Motion to Value the Secured Claim has been filed.

DISCUSSION

Debtor’s Reliance on Motion to Value Secured Claim

A review of Debtor’s Plan shows that it relies on the court valuing the secured claim of Santander USA. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

On May 7, 2020, Debtor filed a Motion to Value the Secured Claim of Santander USA. Dckt. 25. The Motion was set for hearing on the same date and time as the instant Objection. The court

granted the Motion valuing the secured claim at \$4,000.00, which is provided for in the proposed Chapter 13 Plan.

Debtor having filed and the court having granted the Motion to Value Santander's claim, this objection is overruled.

The Plan complies with 11 U.S.C. §§ 1322 and 1325 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 Valerie Eickhof ("Debtor") Chapter 13 Plan filed on March 2, 2020, is confirmed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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

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 May 22, 2020. By the court’s calculation, 11 days’ notice was provided. 14 days’ notice is required.

On May 26, 2020, Debtor filed a Motion to Shorten Time for the instant Motion to Sell. Dckt. 66. The court granted Debtor’s Motion the same day, May 26, 2020. Dckt. 75.

The Motion to Employ 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 Employ is granted.

Monica D. Steinhart (“Debtor”) seeks to employ Heather C. Corfee, of All Professional Realty, Inc. (“Real Estate Agent”) pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Debtor seeks the employment of Real Estate Agent to sell her real property located at 2341 Tamarack Way, Sacramento, CA (“Property”).

Debtor argues that Real Estate Agent’s appointment and retention is necessary to assist Debtor in establishing the fair market value of the Property and to market and sell the Property, listed on Schedule A in Debtor’s petition for the benefit of the Debtor, the bankruptcy estate and creditors. Real Estate Agent is to represent Debtor in negotiating the sale of the Property, market, procure and submit all

purchase offers to Debtor, and in consideration for the services, Real Estate Agent will receive upon completion of any sale, a real estate sales commission of 3% of the purchase price plus \$250.00 in legal compliance fees.

Heather C. Corfee, a Real Estate Agent of All Professional Realty, Inc., testifies that she and the firm will represent Debtor in negotiating the sale of the Property and will market and sell the Property for a commission of 3.0% of the purchase price plus a \$250 legal compliance fee. Heather C. Corfee testifies she and the company do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

Pursuant to § 327(a), a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals, including attorneys, to represent or assist the trustee in carrying out the trustee's duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must not hold or represent an interest adverse to the estate and be a disinterested person.

Section 328(a) authorizes, with court approval, a trustee or debtor in possession to engage the professional on reasonable terms and conditions, including a retainer, hourly fee, fixed or percentage fee, or contingent fee basis. Notwithstanding such approved terms and conditions, the court may allow compensation different from that under the agreement after the conclusion of the representation, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of fixing of such terms and conditions.

Taking into account all of the relevant factors in connection with the employment and compensation of Real Estate Agent, considering the declaration demonstrating that Real Estate Agent does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Heather C. Corfee, of All Professional Realty, Inc. as Real Estate Agent for the Chapter 13 Estate on the terms and conditions set forth in the Residential Listing Agreement filed as Exhibit A, Dckt. 63. Approval of the commission is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

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 Employ filed by Monica D. Steinhart ("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 Employ is granted, and Debtor is authorized to employ Heather C. Corfee, of All Professional Realty, Inc. as Real Estate Agent for Debtor on the terms and conditions as set forth in the Residential Listing Agreement filed as Exhibit A, Dckt. 63.

IT IS FURTHER ORDERED that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and

subject to the provisions of 11 U.S.C. § 328.

IT IS FURTHER ORDERED that no hourly rate or other term referred to in the application papers is approved unless unambiguously so stated in this order or in a subsequent order of this court.

8. [16-27641-E-13](#) **MONICA STEINHART**
[MAC-3](#)

MOTION TO SELL O.S.T.
5-22-20 [56]

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 May 22, 2020. By the court’s calculation, 11 days’ notice was provided. 21 days’ notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days’ notice).

On May 26, 2020, Debtor filed a Motion to Shorten Time for the instant Motion to Sell. Dckt. 68. The court granted Debtor’s Motion the same day, May 26, 2020. Dckt. 74.

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

The Motion to Sell Property is granted.

The Bankruptcy Code permits Monica D. Steinhart, the Chapter 13 Debtor, (“Movant”) to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the real property commonly known as 2341 Tamarack Way, Sacramento, California (“Property”).

The proposed purchaser of the Property is Jared Hunt, and the terms of the sale are:

- A. Purchase price is \$430,000.00. Payment to be made in cash.
- B. The sale is an arm's length transaction.
- C. Debtor will not relinquish title to or possession of the Property prior to payment in full of the purchase price.
- D. Seller to pay for a natural hazard zone disclosure report. Seller to pay Pest 1 clearance not to exceed \$1,000.00 unless Seller agrees to pay additional costs.
- E. Personal property at no warranty or value is included: TV in Master Bedroom, washer and dryer, push law mower, riding law mower, Amazon Blink security camera and Klipsch portable outdoor speaker.
- F. Seller to pay County transfer tax or fee and City transfer tax or fee.
- G. Seller to pay escrow fees and owner's title insurance policy.

TRUSTEE'S RESPONSE

On May 26, 2020, Trustee filed a Response requesting the court take into consideration that the Motion does not state what amount of the anticipated proceeds of \$115,000.00 will be paid to the Trustee. Dckt. 72. Trustee notes that the Trustee can demand sufficient funds to complete the plan, which requires 100% absent a modified plan. *Id.* Trustee also notes that only \$66,183.00 of proceeds have been exempted per Schedule C, Dckt. 1. *Id.*

DISCUSSION

At the time of the hearing, the court announced the proposed sale and requested that all other persons interested in submitting overbids present them in open court. At the hearing, the following overbids were presented in open court: **XXXXXXXXXXXXXXXXXX**.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because the holder of the first deed of trust will be paid in full and Debtor anticipates approximately \$115,000.00 from the sale of the Property which will be sufficient to pay off her Chapter 13 Plan.

Movant has estimated that a 5.5 percent broker's commission from the sale of the Property will equal approximately \$23,650.00. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker an amount not more than 6 percent commission to be distributed as follows: a 3.0 percent commission shall be paid to the Chapter 13 Debtor's broker, All Professional Realty, Inc., and a 2.5 percent commission shall be paid to buyer's real estate broker.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 6004(h) stays an order granting a motion to sell for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court yet provides no grounds to grant this relief.

Movant has not pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 6004(h).

Though the court would be justified in delaying this transaction for the fourteen days required by the Supreme Court under Federal Rule of Bankruptcy Procedure 6004(h) in light of Movant's "oh by the way" request thrown into the prayer, the court recognizes that such delay may cause problems for this transaction. Also, the Debtor will be able to fully fund the Chapter 13 Plan in this case with the sales proceeds.

The court will, for this Motion only, assemble these grounds for Movant as a basis for this Article I bankruptcy judge "overruling" for cause the fourteen-day stay of enforcement otherwise required by the nine Article III Justices of the United States Supreme Court.

The attorneys in this case and others should not take this as a green light that the pleading requirements of the Federal Rules of Civil Procedure, Federal Rules of Bankruptcy Procedure, and Local Bankruptcy Rules are optional, and that this court does not find them proper to enforce. The court may well consider this shortcoming when valuing the additional services for which fees are requested by counsel for Movant.

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

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

The Motion to Sell Property filed by Monica D. Steinhart, the Chapter 13 Debtor, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Monica D. Steinhart, the Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Jared Hunt or nominee ("Buyer"), the Property commonly known as 2341 Tamarack Way, Sacramento, California ("Property"), on the following terms:

- A. The Property shall be sold to Buyer for \$430,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit B, Dckt. 58, and as further provided in this Order.
- B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and

expenses incurred to effectuate the sale.

- C. The Chapter 13 Debtor is authorized to execute any and all documents reasonably necessary to effectuate the sale.
- D. Chapter 13 Debtor is authorized to pay a real estate broker's commission in an amount not more than 5.5 percent of the actual purchase price upon consummation of the sale, to be distributed as follows: a 3.0 percent commission shall be paid to the Chapter 13 Debtor's broker, All Professional Realty, Inc., and a 2.5 percent commission shall be paid to buyer's real estate broker.
- E. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Chapter 13 Debtor. Within fourteen days of the close of escrow, the Chapter 13 Debtor shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow.

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 6004(h) is waived for cause.

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

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

Sufficient Notice Not Provided. No Proof of Service was filed.

The Motion to Confirm the Amended Plan has not been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b).

The Motion to Confirm the Amended Plan is denied without prejudice.

The debtor, Ann Conrad (“Debtor”), seeks confirmation of the Amended Plan. The Amended Plan provides for monthly plan payments of \$784.00 for 60 months, and a 100% dividend to unsecured claims totaling \$19,931.00. Amended Plan, Dckt. 25. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

PLEADING DEFICIENCIES

Combined Motion and Notice of Motion Filed

Adopting a state court practice, Movant has filed a Notice of Motion and Motion. Dckt. 24. That is not proper, with the notice and motion being two separate pleadings. L.B.R. 9004-2(c)(1).

No Docket Control Number

Movant is reminded that the Local Bankruptcy Rules require the use of a new Docket Control Number with each motion. LOCAL BANKR. R. 9014-1(c). Here, the moving party failed to use a Docket Control Number. That is not correct. Counsel is reminded that not complying with the Local Bankruptcy Rules is cause, in and of itself, to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(c)(l).

Notice fo Relief Sought Pursuant to Local Bankruptcy Rule 9014–1(f)(1) or (f)(2) Is Unclear

Movant has not specified clearly whether the Motion is noticed according to Local Bankruptcy Rule 9014-1(f)(1) or (f)(2). The Notice of Motion states that a hearing will be held to move for an order confirming Debtor’s Chapter 13 Plan, and the hearing will be based upon submitted pleadings as well as argument at the hearing. Counsel is reminded that not complying with the Local

Bankruptcy Rules is cause, in and of itself, to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(c)(1).

Insufficient Service of Motion

The court is unable to determine if sufficient notice was provided. Federal Rule of Bankruptcy Procedure 2002(a)(9) requires a minimum of thirty five days' notice of the hearing. Debtor's Notice is deficient of any information regarding notice, except to say "Please take notice at the above referenced date and time" that Debtor moves the court for an order confirming her chapter 13 plan. Dckt. 24.

Moreover, no certificate of service was filed for this Motion. Thus, the court is also unable to determine whether the appropriate parties in interest were served.

Review of Minimum Pleading Requirements for a Motion

The Supreme Court requires that the motion itself state with particularity the grounds upon which the relief is requested. FED. R. BANKR. P. 9013. The Rule does not allow the motion to merely be a direction to the court to "read every document in the file and glean from that what the grounds should be for the motion." That "state with particularity" requirement is not unique to the Bankruptcy Rules and is also found in Federal Rule of Civil Procedure 7(b).

Consistent with this court's repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, applied the general pleading requirements enunciated by the United States Supreme Court to the pleading with particularity requirement of Bankruptcy Rule 9013. *See* 434 B.R. 644, 646 (N.D. Ala. 2010) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 545 (2007)). The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal* to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court. *See* 556 U.S. 662 (2009).

Federal Rule of Bankruptcy Procedure 9013 incorporates the "state with particularity" requirement of Federal Rule of Civil Procedure 7(b), which is also incorporated into adversary proceedings by Federal Rule of Bankruptcy Procedure 7007. Interestingly, in adopting the Federal Rules of Civil Procedure and of Bankruptcy Procedure, the Supreme Court endorsed a stricter, state-with-particularity-the-grounds-upon-which-the-relief-is-based standard for motions rather than the "short and plain statement" standard for a complaint.

Law and motion practice in bankruptcy court demonstrates why such particularity is required in motions. Many of the substantive legal proceedings are conducted in the bankruptcy court through the law and motion process. These include sales of real and personal property, valuation of a creditor's secured claim, determination of a debtor's exemptions, confirmation of a plan, objection to a claim (which is a contested matter similar to a motion), abandonment of property from the estate, relief from the automatic stay, motions to avoid liens, objections to plans in Chapter 13 cases (akin to a motion), use of cash collateral, and secured and unsecured borrowing.

The court in *Weatherford* considered the impact to other parties in a bankruptcy case and to the court, holding,

The Court cannot adequately prepare for the docket when a motion simply states conclusions with no supporting factual allegations. The respondents to such motions cannot adequately prepare for the hearing when there are no factual allegations supporting the relief sought. Bankruptcy is a national practice and creditors sometimes do not have the time or economic incentive to be represented at each and every docket to defend against entirely deficient pleadings. Likewise, debtors should not have to defend against facially baseless or conclusory claims.

434 B.R. at 649–50; *see also In re White*, 409 B.R. 491, 494 (Bankr. N.D. Ind. 2009) (holding that a proper motion must contain factual allegations concerning requirements of the relief sought, not conclusory allegations or mechanical recitations of the elements).

The courts of appeals agree. The Tenth Circuit Court of Appeals rejected an objection filed by a party to the form of a proposed order as being a motion. *St. Paul Fire & Marine Ins. Co. v. Continental Casualty Co.*, 684 F.2d 691, 693 (10th Cir. 1982). The Seventh Circuit Court of Appeals refused to allow a party to use a memorandum to fulfill the pleading with particularity requirement in a motion, stating:

Rule 7(b)(1) of the Federal Rules of Civil Procedure provides that all applications to the court for orders shall be by motion, which unless made during a hearing or trial, “shall be made in writing, [and] *shall state with particularity the grounds therefor*, and shall set forth the relief or order sought.” The standard for “particularity” has been determined to mean “reasonable specification.”

Martinez v. Trainor, 556 F.2d 818, 819–20 (7th Cir. 1977) (citing 2-A JAMES WM. MOORE ET AL., MOORE’S FEDERAL PRACTICE ¶ 7.05 (3d ed. 1975)).

Not stating with particularity the grounds in a motion can be used as a tool to abuse other parties to a proceeding, hiding from those parties grounds upon which a motion is based in densely drafted points and authorities—buried between extensive citations, quotations, legal arguments, and factual arguments. Noncompliance with Federal Rule of Bankruptcy Procedure 9013 may be a further abusive practice in an attempt to circumvent Bankruptcy Rule 9011 by floating baseless contentions to mislead other parties and the court. By hiding possible grounds in citations, quotations, legal arguments, and factual arguments, a movant bent on mischief could contend that what the court and other parties took to be claims or factual contentions in the points and authorities were “mere academic postulations” not intended to be representations to the court concerning any actual claims and contentions in the specific motion or an assertion that evidentiary support exists for such “postulations.”

Grounds Stated in Motion

Movant has not provided any grounds in support of confirmation. The Motion merely states that the court is to read and distill the grounds from:

- A. The Notice of Motion,
- B. United States Bankruptcy Code Section 1325,
- C. Upon the records and files in this action,
- D. The Chapter 13 Plan that has been submitted to the Court,
- E. Whatever else is presented prior to or at the hearing.

The court declines an opportunity to do associate attorney work and assemble motions for parties.

No Evidence Presented in Support of Motion

No declarations or properly authenticated documentary evidence in support of the request for relief.

Therefore, the Motion is denied without prejudice.

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

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

The Motion to Confirm the Amended Plan filed by Ann Conrad (“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.

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Ann Conrad (“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.

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 May 6, 2020. By the court’s calculation, 27 days’ notice was provided. 14 days’ notice is required.

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

-----.

The Objection to Confirmation of Plan is sustained.

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

- A. Debtor is delinquent in plan payments.
- B. Debtor will not be able to complete the Plan in sixty months as proposed.

DISCUSSION

Trustee’s objections are well-taken.

Delinquency

Debtor is **\$227.40 delinquent in plan payments, which represents one portion of one month of the \$3281.00 plan payment.** Before the hearing, another plan payment will be due. According to Trustee, the Plan in § 2.01 calls for payments to be received by Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Plan Term is More Than 60 Months

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to Trustee, the Plan will complete in 79 months due to the mortgage arrear claim in the Plan being estimated at \$32,000.00, but the filed proof of claim indicates \$45,422.94 in arrearage. The 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 and 1325(a). The Objection is sustained, and the Plan is not confirmed.

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on May 7, 2020. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

-----.

The Objection to Confirmation of Plan is sustained.

Lakeview Loan Servicing, LLC ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

- A. Debtor's Plan fails to provide for Creditor's secured claim.
- B. Debtor's Plan fails to cure Creditor's pre-petition arrearages and ongoing post-petition installments.

DISCUSSION

Creditor's objections are well-taken.

Failure to Provide for a Secured Claim

Creditor asserts a claim of \$206,630.93 in this case.

Creditor alleges that 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.

Failure to Cure Arrearage of Creditor

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts \$1,533.80 in pre-petition arrearages. The Plan does not propose to cure those arrearage. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of 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 Lakeview Loan Servicing, 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.

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 April 10, 2020. By the court's calculation, 53 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is granted.

The debtor, Ramon Parra ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for monthly plan payments of \$755.00 for months one (1) through five (5), followed by monthly plan payments of \$863.00 for months six (6) through sixty (60), and a 0% dividend to unsecured claims totaling \$7,630.00. 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 May 13, 2020. Dckt. 45. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor is delinquent in plan payments.

DISCUSSION

The Chapter 13 Trustee asserts that Debtor is \$108.00 delinquent in plan payments, which represents a portion of one month of the \$863.00 plan payment. Before the hearing, another plan

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

On May 26, 2020, Debtor filed a Response indicating that Debtor is now current in plan payments as a payment was received and credited on by the Trustee in May 18, 2020 in the amount of \$971.00. Dckt. 48.

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

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Ramon Parra (“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 April 10, 2020, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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, parties requesting special notice, and Office of the United States Trustee on May 18, 2020. By the court’s calculation, 15 days’ notice was provided. 14 days’ notice is required.

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

The Motion to Impose the Automatic Stay is granted.

Sergio Javier Aviles (“Debtor”) seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) imposed in this case. This is Debtor’s third bankruptcy petition pending in the past year with the prior two cases having been dismissed. Debtor’s prior bankruptcy cases (Nos. 19-23842 and 19-27753) were dismissed on November 27, 2019, and March 6, 2020, respectively. *See* Order, Bankr. E.D. Cal. No. 19-23842, Dckt. 58, November 27, 2019; Order, Bankr. E.D. Cal. No. 19-27753, Dckt. 54, March 6, 2020. Therefore, pursuant to 11 U.S.C. § 362(c)(4)(A)(i), the provisions of the automatic stay did not go into effect upon Debtor filing the instant case.

Here, Debtor states that the instant case was filed in good faith and explains that the previous cases were dismissed because Debtor failed to make plan payments.

APPLICABLE LAW

When the stay has not gone into effect pursuant to 11 U.S.C. § 362(c)(4), a party in interest

may request within 30 days of filing that the stay take effect as to any or all creditors (subject to such conditions or limitations as the court may impose), after notice and a hearing, only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed. 11 U.S.C. § 362(c)(4)(B).

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

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

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

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

11 U.S.C. § 362(c)(4)(D).

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

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

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

DISCUSSION

Debtor's prior cases were dismissed after Debtor failed to make plan payments (Nos. 19-23842 and No. 19-27753).

Debtor testifies that he now has sufficient income to make plan payments and is receiving financial assistance from his father, who has agreed to give him a gift of \$20,000 in order to partially fund the plan. Dckt. 12. The Declaration of Sergio Aviles, Debtor's father, was filed in support of the motion, and Mr. Aviles testifies that he is indeed giving his son a gift of \$20,000 to fund the plan. Dckt. 11. In addition, Debtor's father testifies that he will contribute \$980.00 a month to further supplement the plan funding.

A review of the proposed Plan (Dckt. 2) shows that it is one to cure a substantial arrearage, (\$50,973.11), on the claim secured by the Debtor's residence. The first payment on the arrearage to this Class 1 creditor is to be \$25,000. Plan, § 3.07(c); Dckt. 2. The Additional Provisions provide for an additional plan payment by the Debtor of \$30,000 in the first month and regular monthly payments of \$2,495.00 for sixty (60) months. Plan, p. 7.

On Schedule A/B and D, Debtor lists the property securing the Class 1 Claim to have a value of \$270,000, but to be fully encumbered. Dckt. 1 at 11, 19. In theory, the lump sum payment would work to create some equity in the property for the Debtor.

Debtor and his family have "stepped up" and "put their money where their mouth is" with this substantial arrearage payment in the first month of the Plan. For the shortcomings in the prior two cases, Debtor's, and his family's, good faith is shown by their immediate economic investment.

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

The Motion is granted, and the automatic stay is imposed 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 Impose the Automatic Stay filed by Sergio Javier Aviles ("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 imposed pursuant to 11 U.S.C. § 362(c)(4)(B) for all purposes and parties, unless terminated by operation of law or further order of this court.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on April 24, 2020. By the court's calculation, 39 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 d/b/a Shellpoint Mortgage Servicing ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

- A. Debtor's Plan fails to provides for Creditor's pre-petition arrearage.
- B. Debtor may not be able to make monthly plan payments.

DISCUSSION

Creditor's objections are well-taken.

Failure to Cure Arrearage of Creditor

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

a timely proof of claim in which it asserts \$1,886.66 in pre-petition arrearage. The Plan does not propose to cure those arrearage. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearage.

Failure to Afford Plan Payment

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). The Plan proposes monthly payments of \$300.00 for the first four months, monthly payments of \$500.00 for months five through sixteen, and monthly payments of \$1000.00 for months seventeen through twenty-eight. However, Debtor's monthly net income is only \$303.49. Schedule J, Dckt 1. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

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

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

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

The Objection to the Chapter 13 Plan filed by NewRez LLC d/b/a 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.

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 May 6, 2020. By the court’s calculation, 27 days’ notice was provided. 14 days’ notice is required.

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

-----.

The Objection to Confirmation of Plan is sustained.

The Chapter 13 Trustee, David Cusick (“Trustee”), opposes confirmation of the Plan in order to make the court aware of certain discrepancies in the documents filed:

- A. Debtor may not be able to make monthly plan payments.
- B. Debtor initially filed two plans in one document, and then served a Notice of Errata.

DISCUSSION

Multiple Plans

Debtor initially filed two plans within one document. Dckt. 12. Debtor then filed a Notice of

Errata on April 9, 2020, confirming that the Plan to be confirmed is contained within pages one (1) through seven (7) of the document. Dckt. 19.

Failure to Afford Plan Payment

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). The Plan proposes monthly payments of \$2,555.00, but Debtor's monthly net income is \$2,525.00. See Schedule J, Dckt. 14. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

On May 1, 2020, the two Debtors filed a "tweaked" Schedule J to show \$2,525.00 in month net income. Dckt. 22. In looking at the tweaked Schedule J, the court notes the following that raises questions about the two Debtors' inability to actually be financially able to fund the proposed Plan.

- A. Monthly Home Maintenance Expense.....(\$5.00)
 - 1. The proposed Plan seeks to cure (\$32,540) in pre-petition arrearage on Debtor's residence. Plan ¶ 3.07(c); Dckt. 12. On Schedule D Debtor lists there being two creditors having liens on the residence, which liens secure (\$352,500) in claims. Dckt. 15 at 11-12. Debtor states that the residence has a value of \$380,000. It is questionable that over five years of this plan there would only be \$60 a year in repair and maintenance expenses for a \$380,000 home.

- B. Monthly Food and Housekeeping Supplies.....(\$300.00)
 - 1. Assuming a modest (\$50) a month for the housekeeping supplies, that leaves (\$250) a month for food. Over a 30 day month, that is only per meal for each (\$1.39) for each of the Debtors, which appear to be a questionable amount for meals for five years.

- C. Monthly Clothing and Laundry Expenses.....(\$15.00)
 - 1. Assuming (\$5) a month for laundry (soap and softener) that leaves (\$5) a month for clothing for each of the two Debtors. This is a questionable amount for clothing the Debtors for five years.

- D. Monthly Dental and Medical Expenses.....(\$3.31)
 - 1. Annual out of pocket medical expenses of (\$36) also appears economically questionable for each of the two Debtors on only (\$1.50) a month.

- E. Monthly Entertainment.....(\$0.00)
 - 1. Debtors having no entertainment or recreation for five years appears questionable.

- F. Monthly Transportation Expenses.....(\$150)

1. (\$150) a month for gas, maintenance, repairs, and registration for Debtor's two vehicles (one with 150,000 miles and the other with 220,000 miles) appears questionable. If the registration is only (\$120) each, that is (\$20 a month). Assuming (\$200) for routine maintenance, that is (\$16) a month. Given that these are high mileage vehicles, the maintenance and repair expenses are likely to be much, much higher. But using that number, that would leave \$124 a month for gas. (Debtor states that he pays (\$10) a month in DMV taxes. It is unclear if Debtor believes his registration is a tax or there is a tax he pays in addition to registration.)

Assuming \$3.00 a gallon for gas, that would allow Debtor to purchase 40 gallons a month, 20 gallons for each vehicle. At 20 miles to the gallon, each vehicle could be driven 100 miles a week, or just 14 miles, round trip, a day. Having only a 7 mile per day radius appears questionable.

The accuracy of the financial information provided by Debtor under penalty of perjury and filed with the Federal Rule of Bankruptcy Procedure 9011 certifications, appears to be "questionable." It appears to be reminiscent of the negative reference to MAI appraisers in the 1980's, with "MAI" derogatorily stated to be "made as instructed."

At the hearing, **XXXXXXXXXX**

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

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

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

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

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

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

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 April 8, 2020. By the court’s calculation, 55 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied.

The debtor, Charlie Marzan Balangue (“Debtor”), seeks confirmation of the Amended Plan. The Amended Plan provides for a monthly plan payment of \$2,335.00 for the first month of the plan, followed by monthly plan payments of \$3,400.00 for months two (2) through sixty (60), with a 100% dividend to unsecured claim totaling \$2,079.47. Amended Plan, Dckt. 46. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE’S RESPONSE

The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Response on May 13, 2020. Dckt. 54. Trustee requests that the court take the following into consideration:

- A. Debtor may not be able to make monthly plan payments.

DISCUSSION

Failure to Afford Plan Payment

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor fails to explain the decreases in expenses that would allow for an increase of \$1,005.00 in monthly payments. The Schedules show lowered expenses of home maintenance by \$200.00, electricity and gas by \$75.00, food and housekeeping by \$400.00, personal care by \$75.00, clothing by \$77.00, medical and dental by \$51.00, entertainment by \$100.00, and charity by \$27.00. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Having the conflicting statements under penalty of perjury without explanation as to why there can be accurate conflicting statements leave the court unable to determine when, and if, the Debtor is providing accurate testimony. The Debtor appears to be very "experienced" in filing bankruptcy cases (being represented by experienced bankruptcy counsel in this and the two most recent prior cases), this being her fifth case since September 2013, and should appreciate the significance of making statements under penalty of perjury.

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

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Charlie Marzan Balangue ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor’s Attorney on May 6, 2020. By the court’s calculation, 27 days’ notice was provided. 14 days’ notice is required.

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

-----.

The Objection to Confirmation of Plan is sustained.

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

- A. Debtor’s Plan fails to provide for a secured claim or explain the personal injury case listed.
- B. Plan may not be Debtor’s best effort.

DISCUSSION

Trustee’s objections are well-taken.

Failure to Cure Arrearage of Creditor

Creditor Real Time Resolutions, Inc. holds a second deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts \$58,354.34 in pre-petition arrearage. The Plan does not propose to cure those arrearage. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearage.

Failure to Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor alludes to a personal injury action, where \$100,000.00 is scheduled and exempted, but Debtor fails to provide a court, case number or claim number for the action. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Failure to Provide Best Effort

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.

According to Trustee, Debtor admitted at the First Meeting of Creditors that she is receiving child support. Debtor has failed to disclose in Schedule I her monthly income from child support in the amount of \$2,000.00. Schedule I, Dckt. 1. Accordingly, Debtor's net monthly income is actually \$3,325.00 as opposed to the \$1,325.00 that is currently listed. Schedule J, Dckt 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.

18. [20-20803-E-13](#) LYNN WEST
[DPC-1](#) Peter Cianchetta
18 thru 19

**CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY DAVID P
CUSICK
3-17-20 [15]**

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 17, 2020. By the court’s calculation, 42 days’ notice was provided. 14 days’ notice is required.

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

Continuance of April 28, 2020 Hearing

The Chapter 13 Trustee, David Cusick (“Trustee”), opposes confirmation of the Plan on the basis that: the First Meeting of Creditors as delayed due to the COVID-19 restricted access to the Federal Courthouse. HSBC Bankr, N.A., as Trustee, has filed a separate Objection to Confirmation (Dckt. 19) asserting that the plan provisions (\$1,300 adequate protection payments until the property securing the claim, the Debtor’s residence is sold by some later, unspecified date) improperly modifies that creditor’s claim. The court notes that it appears that the CARES Act provisions relating to residential loans may now be in play.

The court continues the hearing to allow the Trustee to conclude the Meeting of Creditors, the Debtor to determine what is a reasonable “property sold in the future” provision, and the Debtor and Creditor to determine whether the treatment of this claim is effected by non-bankruptcy law.

REVIEW OF OBJECTION

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

- A. Trustee has been unable to examine Debtor at the Meeting of Creditors due to COVID-16, and the meeting has been continued to April 16, 2020.

DISCUSSION

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

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 filed by the Chapter 13 Trustee to Confirmation of the Chapter 13 Plan 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 sustained and the Chapter 13 Plan is not confirmed.

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 20, 2020. By the court’s calculation, 39 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 Sustained and the Plan is not confirmed.

HSBC Bank, USA, N.A., opposes confirmation of the Plan on the basis that: the First Meeting of Creditors was delayed due to the COVID-19 restricted access to the Federal Courthouse. HSBC Bank, N.A., as Trustee, has filed a separate Objection to Confirmation (Dckt. 19) asserting that the plan provisions (\$1,300 adequate protection payments until the property securing the claim, the Debtor’s residence, is sold by some later, unspecified date) improperly modifies that creditor’s claim. The court notes that it appears that the CARES Act provisions relating to residential loans may now be in play.

The court continued the hearing to allow the Trustee to conclude the Meeting of Creditors, the Debtor to determine what is a reasonable “property sold in the future” provision, and the Debtor and Creditor to determine whether the treatment of this claim is effected by non-bankruptcy law.

REVIEW OF OBJECTION

HSBC Bank USA, National Association as Trustee for Wells Fargo Asset Securities Corporation, Mortgage Asset-Backed Pass-Through Certificates Series 2007-PA2 as serviced by Wells Fargo Bank, N.A. (“Creditor”) holding a secured claim opposes confirmation of the Plan on the basis that:

- A. Debtor's Plan impermissibly modifies Creditor's obligation by proposing reduced adequate protection payments pending sale of Debtor's principal residence.
- B. Debtor's Plan fails to cure pre-petition arrearage.

Debtor's May 17, 2020 Reply

Debtor filed a Reply on to the Objection arguing that Debtor's plan provides adequate protection because there is equity in excess of the debt; it is unclear if the instant objection is valid on the grounds that Claim has been transferred to Specialized Loan Servicing (Dckt. 24); and Debtor has submitted the unsolicited loan modification provided by Movant. Lastly, Debtor proposes to set an end date for the sale of the home to six months after a final decision is obtained on the loan modification if it is denied.

DISCUSSION

Creditor's objections are well-taken.

Modification of an Obligation Secured Only by Principal Residence

Debtor's Plan was not filed in good faith and is an improper modification of a claim secured only by a security interest in real property that is Debtor's principal residence. Creditor has filed a Proof of Claim indicating a secured claim in the amount of \$678,082.11, secured by a first deed of trust against the property commonly known as 5080 Willow Vale Way, Elk Grove, California. Debtor's Schedules indicate that this is Debtor's primary residence. This modification violates 11 U.S.C. § 1322(b)(2), which prohibits the modification of an obligation secured only by Debtor's residence.

Failure to Cure Arrearage of Creditor

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts \$250,135.07 in pre-petition arrearage. The Plan does not propose to cure those arrearage. Instead, the Plan references a sale of the Property that Creditor surmises that satisfaction of this arrearage will be done through the sale. Moreover, the Debtor does not provide a specific plan that includes a date for the sale and thus Creditor objects to the indefinite cure period. Further, Creditor requests that Debtor should add to the Plan language stating what happens to the if the sale does not go through, namely that Debtor will surrender the Property and/or afford Creditor automatic relief from the stay if the Property is not sold.

The proposed Plan provides that at some unstated future date, Debtor will sell the property securing Creditor's claim and at that unstated time in the next five years, Creditor will be paid its arrearage. In the meantime, for the next five years, Debtor will only make a post-petition payment of \$1,300 as an adequate protection payment.

This court has been very "liberal" (at least compared to some other judges) in allowing debtors to diligently prosecute a loan modification or sale of property, a "maybe sometime in the next five years I may sell property, but in the meantime, I'll make an 'adequate protection payment' that is less than rent and the creditor can gamble that the property will have a value sufficient to pay not only

the arrearage and all of the further interest, fees, costs, and expenses,” plan that is not a confirmable Chapter 13 Plan.

In the Reply to the Objection, Debtor comes back “proposing” to set a sales date six months after a final decision on the loan modification application. Dckt. 31. Debtor has offered no evidence that Debtor is diligently prosecuting a loan modification, has not explained what is being done, or the status. Rather, Debtor merely has her attorney allege that there is a loan modification request. Given the Debtor’s “I’ll sell sometime during the next five years” proposal presented with the representation of experienced bankruptcy counsel, Debtor’s failure to testify and provide an explanation of what has actually occurred causes the court concern.

Debtor also argues to the court that this claim has been transferred to Specialized Loan Servicing, LLC, directing the court to the Transferred filed as Docket 24. Response ¶ 2; Dckt. 3; Dckt. 31.

However, when the court reads the Transfer of Claim, it does not transfer the claim to Specialized Loan Servicing as the owner, but merely as the “Servicing Agent” for HSBC Bank, USA, N.A. Nothing indicates why the Objection filed by Creditor would change because Creditor is utilizing a servicing agent.

Debtor leaves too many untestified to questions hanging and fails to connect the dots on the summary assertions Debtor has her counsel make in the Reply.

Debtor can go back, confer with her counsel, prepare the real Chapter 13 Plan she desires to propose, have it drafted, provide evidence in support, file a motion to confirm, and clearly present it to the court, the Chapter 13 Trustee, and parties in interest.

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

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

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

The Objection to Confirmation filed by HSBC Bank USA, N.A., as 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 is sustained and the Amended Plan is not confirmed.

**The Parties Shall Address With the Court at the June 2, 2020
Hearing What Further Reasonable Continuance is Required**

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on January 14, 2020. By the court’s calculation, 42 days’ notice was provided. 28 days’ notice is required.

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

**The Motion to Value Collateral and Secured Claim of Towd Mortgage Trust
 (“Creditor”) is **XXXXX**.**

Continuance of April 28, 2020 Hearing

On April 20, 2020, Debtor filed a Supplemental Response requesting that the court further continue the hearing on the instant motion until after the Shelter in Place order has passed. Dckt. 79. Debtor states that the order has prevented Debtor from obtaining a formal appraisal as both the Debtor and appraiser wish to prevent the spread of the virus. *Id.*

In light of the ongoing restrictions, the court continues the hearing to a period sufficiently after May 1, 2020, to allow Debtor to have the appraisal scheduled and conducted. Additionally, as travel restrictions are partially lifted, Debtor and the appraiser should be able to take advantage of such.

REVIEW OF MOTION

The Motion to Value filed by Deborah Joyce Watson (“Debtor”) to value the secured claim of Towd Point Mortgage Trust (“Creditor”) is accompanied by Debtor’s declaration. Declaration, Dckt.

44. Debtor is the owner of the subject real property commonly known as 1800 59th Avenue, Sacramento, California (“Property”). Debtor seeks to value the Property at a fair market value of \$280,000.00 as of the petition filing date. As the owner, Debtor’s opinion of value is evidence of the asset’s value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

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

PROOF OF CLAIM FILED

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

OPPOSITION

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

DISCUSSION

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

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

Creditor has provided the Declaration of Peter Sousa and his appraisal as to the value of the Property. Dckts. 58, 57. He testifies that the value is \$300,000. The Appraisal Report (Dckt. 57) provides several comparable properties, makes adjustments for specific items, and states the basis for having an opinion of \$300,000 for the value of the Property.

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

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

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

- A. No payments will be made on the senior obligation causing interest to accrue, there being no escrow for taxes, and the insurance lapsing and the senior creditor putting in place expensive forced place insurance.
- B. If Creditor goes to foreclose, it will have to pay all of the senior obligations, including property taxes and insurance, and then costs of sale, estimated to be (\$24,000) for a \$300,000 sale.
- C. Thus, for its lien that has been protected against valuation, Creditor will lose likely around (\$20,000). (\$300,000 sales price - (\$284,835) current debt - (\$5,650) additional interest - (\$750) insurance - (\$3,000) property taxes - (\$24,000) costs of sale = (\$18,235).)

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

The Parties Shall Address With the Court at the June 2, 2020 Hearing What Further Reasonable Continuance is Required

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

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

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

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

Continuance of April 28, 2020 Hearing

On April 20, 2020, Debtor filed a Supplemental Response requesting that the court further continue the hearing on the instant motion until after the Shelter in Place order has passed. Dckt. 79. Debtor states that the order has prevented Debtor from obtaining a formal appraisal as both the Debtor and appraiser wish to prevent the spread of the virus. *Id.*

In light of the ongoing restrictions, the court continues the hearing to a period sufficiently after May 1, 2020, to allow Debtor to have the appraisal scheduled and conducted. Additionally, as travel restrictions are partially lifted, Debtor and the appraiser should be able to take advantage of such.

REVIEW OF MOTION

The debtor, Deborah Joyce Watson ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for payments of \$250.00 commencing January 25, 2020 for 33 months and a 0.0% percent dividend to unsecured claims totaling \$101,646.96. Amended Plan, Dckt. 34. 11 U.S.C.

§ 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on February 6, 2020. Dckt. 48. Trustee opposes on the basis that:

1. The Plan relies on two pending Motions to Value Secured Claims and the Plan will not have sufficient monies to pay the claims in full if these Motions are denied.
2. Debtor has failed to provide documents in support of son paying "half of all costs."

CREDITOR'S OPPOSITION

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

1. The Plan does not provide for the full value of Creditor Deutsche's claim.
2. The Plan Does not promptly cure Creditor Deutsche's pre-petition arrears.
3. The Plan makes no provision for the ongoing post-petition payments.

CREDITOR'S OPPOSITION

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

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

Request for Continuance - March 31, 2020 Hearing

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

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

DISCUSSION

Failure to Afford Plan Payment

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

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

Failure to Cure Arrearage of Creditor Deutsche

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

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

Valuation of Creditor Towd's Secured Claim

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

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 3007-1 Objection to Claim—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on March 30, 2020. By the court's calculation, 64 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Objection to Proof of Claim Number 4 of Deutsche Bank National Trust Company is ~~XXXXXXXXXX~~.

Adam Scott Newland and Sherri Ann Newland, Chapter 13 Debtor, ("Objector") requests that the court disallow the claim of Deutsche Bank National Trust Company ("Creditor"), Proof of Claim No. 4 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of \$37,801.02.

Objector asserts that the claim defective on the basis that the proof of claim is in excess of the correct amount of arrears. Debtor seeks correction of the Proof of Claim to \$20,594.58. Moreover, Objector argues that the attachment to the Proof of Claim lacks the necessary information required to support the secured claim in the amount demanded.

Final Cure and Prior Case

Objector states that in the prior Chapter 13 case, 13-31616, Objector completed the prior case and there was a final cure of Creditor's arrearage at that time as provided in Federal Rule of Bankruptcy

DISCUSSION

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial evidence to overcome the prima facie validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and requires financial information and factual arguments. *In re Austin*, 583 B.R. 480, 483 (B.A.P. 8th Cir. 2018). Notwithstanding the prima facie validity of a proof of claim, the ultimate burden of persuasion is always on the claimant. *In re Holm*, 931 F.2d at p. 623.

Debtor argues that Creditor lists the incorrect amount of \$37,801.02 on the basis that on Debtor's previous case (Case No. #13-31616), Creditor determined that the account had a post-petition balance due of \$10,440.66, through October 1, 2018. Debtors received a discharge on that case. Thus, by failing to account for that determination, Creditor fails to start the accounting on that date which increases the amount of arrears to \$37,801.02.

Creditor Response

On May 19, 2020, Creditor filed a Response to Debtor's Objection. Dckt. 31. Creditor argues that after reviewing the claim objection, Creditor filed an Amended Proof of Claim which provides for a total claim amount of \$694,139.98, including \$23,940.56. Creditor's counsel has attempted to communicate with Debtor's Counsel but has been unable to reach him.

Debtor's Response

Debtor filed a Response and argues that the Amended Proof of Claim filed is also defective and invalid because the claim incorrectly increases the arrears to \$23,940.56 without taking into account the previously payment made of \$13,839.96, which increases the monthly escrow and total monthly payment from the original proof of claim. Thus, Creditor fails to decrease the arrears or delete the projected escrow shortage which is paid monthly in the increased escrow from \$883.22 to \$903.45 in the amended proof of claim.

Oral Argument

At the hearing the respective counsel addressed the \$23,940.56 arrearage asserted by Creditor and the \$20,594.58 asserted by Debtor. **XXXXXXXXXX**

To the extent that there is a computational dispute, the Parties suggested to the court that a method for resolving such would be **XXXXXXXXXX**

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 May 6, 2020. By the court’s calculation, 27 days’ notice was provided. 14 days’ notice is required.

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

-----.

The Objection to Confirmation of Plan is sustained.

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

- A. Debtor may not be able to make the plan payments.
- B. Debtor failed to disclose possible inheritance on Schedules or Statement of Financial Affairs.

DISCUSSION

Trustee’s objections are well-taken.

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C.

§ 1325(a)(6). Trustee asserts that at the Meeting of Creditors, Debtor admitted that his non-filing spouse has lost all business, thus based on this Debtor has a possible negative budget and the Plan may solely rely on Debtor's income. If this is the case, the expenses listed in Schedule J will exceed Debtor's income.

Moreover, Trustee asserts that Debtor admitted that he is the sole heir to his mother who has recently passed. Debtor failed to supplement his Schedules and Statement of Affairs to clarify or include shared bank accounts, mother's life insurance, or any property he might be holding or controlling for his mother. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

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

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and Chapter 13 Trustee on May 6, 2020. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

-----.

The Objection to Confirmation of Plan is sustained.

Gregory Kelly ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

- A. Debtor's filing of the case was not on good faith as it was done to avoid Creditor's post-judgment collection actions in state court.
- B. Bad faith filing includes Debtor's failure to disclose in his petition of certain material changes in Debtor's state of affairs.

DISCUSSION

In considering Creditor's objection that this case was not filed in good faith because it was done to stymie Creditor's judgment collection, such is a "normal" reason for filing bankruptcy.

Creditor's detailed Objection outlines the frustration in attempting to collect, the Debtor asserting exemptions, and the failure to pay back the \$2,500 of the original \$27,500 investment by Creditor in the "guaranteed returns and high interest rate" investment promised by Debtor. Objection ¶ 5. Creditor has computed the interest due from Debtor on the "investment" is \$6,500.

To the extent that Creditor believes that improper conduct may exist, a debtor "merely" filing bankruptcy to stop judgment collection is not bad faith.

Creditor references other conduct, some of which may go to whether Debtor may obtain a discharge, discovery in connection with a plan, or enforcement of a subpoena.

Some may go to whether the financial information provided is accurate, which primarily goes to feasibility, but it may go to the prosecution of this case in good faith. Given the court's decision to sustain this and the Trustee's separate objection, the court does not address these facts at this time.

Feasibility

Creditor points to several of the same assertions as those stated in Trustee's Objection (Dckt. 24). As explained in Trustee's objection, Trustee asserts that Debtor admitted that he is the sole heir to his mother who has recently passed. Debtor failed to supplement his Schedules and Statement of Affairs to clarify or include shared bank accounts, mother's life insurance, or any property he might holding or controlling for his mother.

Moreover, at the Meeting of Creditors, Debtor admitted that his non-filing spouse has lost all business, thus based on this Debtor has a possible negative budget and the Plan may solely rely on Debtor's income. If this is the case, the expenses listed in Schedule J will exceed Debtor's income. This lack of income would leave Debtor with a \$1,500 monthly deficiency in the proposed plan. Creditor argues that this loss of income makes the plan unfeasible.

Creditor further argues that at the Meeting of Creditors Debtor admitted that while he has not filed 2019 State and Federal Tax Returns, he expects to owe money placing further strain on a plan that is already unfeasible due to non-filing spouse's loss of income.

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

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

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

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

The Objection to the Chapter 13 Plan filed by Gregory Kelly ("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,

Debtor's Reliance on Motion to Value Secured Claim

Creditor objects on the grounds that Debtor's Plan does not provide for the full payment of the Vehicle. Indeed, Debtor's Plan shows that Debtor has listed Creditor as a Class 2(B) claim which are claims reduced based on value of collateral. Dckt. 2. However, a review of the court's docket shows that Debtor has failed to file a Motion to Value the Secured Claim of Capital One Auto Finance. Thus, without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

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

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

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

The Objection to the Chapter 13 Plan filed by Capital One Auto Finance ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on May 6, 2020. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

-----.

The Objection to Confirmation of Plan is sustained.

The Chapter 13 Trustee, David Cusick ("Trustee"), originally opposed confirmation of the Plan on the basis that (Dckt. 30):

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

On May 27, 2020, Trustee filed an Amended Objection opposing confirmation of the Plan on the following basis (Dckt. 37):

- A. Plan relies on yet to be filed Motions to Value Collateral.
- B. Debtor misclassified a secured claim.
- C. Debtor may not be able to comply with the plan.

- D. Debtor failed to list assets on Schedule B.
- E. The Plan proposes Additional Provisions listing a lump sum payment that seems unlikely.

DISCUSSION

Trustee's objections are well-taken.

Debtor's Reliance on Motion to Value Secured Claim

A review of Debtor's Plan shows that it relies on the court valuing the secured claims of Capital Auto Finance and Ally Financial. However, Debtor has failed to file Motions to Value the Secured Claim of both these Creditors. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

Class 4 Claim

Debtor lists Real time Resolutions, Inc. as a Class 4 claim. However, Creditor's Proof of Claim shows that the debt matures during the bankruptcy and is in default \$62,127.00. Proof of Claim 2. Class 4 claims are claims Debtor may pay directly provided they are not in default. This particular Creditor having filed a proof of claim showing a default, Debtor has misclassified this Creditor as a Class 4 claim.

Failure to Afford Plan Payment

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Trustee asserts that at the Meeting of Creditors Debtor admitted she has a second job not listed on Schedule I nor its expenses listed on Schedule J. Moreover, Debtor also admitted to receiving a refund of \$3,108.83 from previous case # 19-20429, which was not disclosed on her current Schedules.

Lastly, Debtor's Plan relies on a lump sum payment to Class 1 Creditor Real Time Resolutions, Inc. in the amount of \$62,437.70. However, Debtor fails to explain where that lump sum payment is coming from. Trustee points out that Debtor's only apparent source would be a refinance of her real property, which is currently over-encumbered.

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

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

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

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

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

screen shot of an NADA valuation for the Vehicle. Dckt. 29. Nobody authenticates Exhibit A. While a hearsay exception exists for such trade journals, it must still be authenticated. F.R.E. 901 et seq.

At the hearing, counsel for Debtor addressed authentication of Exhibit A, ~~XXXXXXXXXX~~

Trustee filed a Response on May 18, 2020 stating that he does not oppose Debtor's motion.
FN.1. Dckt. 42. Trustee notes that Debtor provides for Creditor in Class 2(B) of the Plan and points the court to Creditor's Proof of Claim which states a claim for \$23,077.60, claiming \$10,350.00 as secured.

FN.1. The court notes that there are two Responses filed by Trustee. A careful review of both documents shows that they are identical. Thus, the court takes the Response filed on May 26, 2020, Dckt. 44, as a clerical error.

DISCUSSION

~~The lien on the Vehicle's title secures a purchase-money loan incurred on November 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 \$23,077.60. Proof of Claim, No. 1. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of \$8,350.00, the value of the collateral. See 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.~~

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

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

~~The Motion to Value Collateral and Secured Claim filed by Shannon Todd Butler ("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 Ally Financial ("Creditor") secured by an asset described as 2015 Chrysler 200 Limited ("Vehicle") is determined to be a secured claim in the amount of \$8,350.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$8,350.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.~~

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on May 19, 2020. By the court's calculation, 14 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 Consumer Portfolio Services, Inc. ("Creditor") is granted, and Creditor's secured claim is determined to have a value of \$18,425.00.

The Motion filed by Coletha Elizabeth Browning ("Debtor") to value the secured claim of Consumer Portfolio Services, Inc. ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 21. Debtor is the owner of a 2017 Kia Sorento ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$18,425.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004). Debtor offers no testimony as to the condition of the vehicle.

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on June 2017, which

is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$27,351.35. Proof of Claim, No. 1. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of \$18,425.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion to Value Collateral and Secured Claim filed by Coletha Elizabeth Browning ("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 Consumer Portfolio Services, Inc. ("Creditor") secured by an asset described as 2017 Kia Sorento ("Vehicle") is determined to be a secured claim in the amount of \$18,425.00, 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 \$18,425.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

FINAL RULINGS

29. [15-28301-E-13](#) RICHARD/PAULA CUMMINGS CONTINUED MOTION TO MODIFY
[MET-3](#) MaryEllen Terranella PLAN
2-29-20 [106]

No Appearances Required for June 2, 2020 Hearing

If the Parties believe that the continued hearing date should be changed, Counsel for Debtors may communicate with Counsel for the Trustee, and Counsel for the Trustee may advise the Court of a preferred continued hearing date.

Final Ruling: No appearance at the June 2, 2020 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on February 29, 2020. By the court's calculation, 59 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 hearing on the Motion to Confirm the Modified Plan is continued to 3:00 p.m. on July 14, 2020.

May 26, 2020 Status Report

Debtors filed a Status Report stating that they have applied for a reverse mortgage, have obtained their certificate of eligibility for it, and the residence was inspected by an appraiser on May 12, 2020. Dckt. 123. However, Debtors are still waiting for the loan process to be completed and, as of yet, there is no loan approval. *Id.*

Continuance of April 28, 2020 Hearing

Considering the time this case has been pending, the issues relating to the Motion, and the impact of the COVID-19 restrictions on the ability to do business, the hearing is continued. If Debtor is able to obtain the reverse mortgage commitment or otherwise resolve the Trustee's opposition, the Parties may file a supplemental pleading stating the Trustee's withdrawal of opposition and any amended or additional terms to be stated in the order confirming the Plan. The Trustee shall lodge a proposed order granting this Motion, including any of the additional provisions to be included in the confirmation order.

REVIEW OF MOTION

The debtors, Richard Jay Cummings and Paula Rae Cummings ("Debtors") seek confirmation of the Modified Plan to address the deficiencies that led to Trustee's Motion to Dismiss due to Debtor Richard's retirement, and now his sole source of income is Social Security in the amount of \$2,096.00 per month after retirement funds have been exhausted. Declaration, Dckt. 109. The Modified Plan provides \$2,417.00 per month for 52 months, \$1,679.00 per month for 7 months, and \$28,102.00 per month for 1 month, and a 0% percent dividend to unsecured claims totaling \$190,932.00. Modified Plan, Dckt. 108. 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 March 30, 2020. Dckt. 116. Trustee requests that the court take the following into consideration:

- A. The Plan is dependent on the Debtors' obtaining a reverse mortgage on their property. However, Debtors failed to indicate when or with whom they are applying for this reverse mortgage.

DISCUSSION

Debtors filed a Reply to Trustee's Response indicating that they have applied for the reverse mortgage with Mortgage Marketing Masters. The process was delayed due to COVID-19 taking them three weeks to complete the required counseling session but have obtained their certificate of eligibility. The information is now with the mortgage company which is waiting on the finance company.

However, Debtors do not yet have loan approval or a closing date at this time. Debtors requests for the motion to modify be granted or, in the alternative, that the hearing on the motion be continued to allow Debtors to update the court as to the status of the application.

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 Plan filed by Richard Jay Cummings and Paula Rae Cummings (“Debtors”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Motion to Confirm is continued to 3:00 p.m. on July 14, 2020 (the first available hearing date at least one month after the June 2, 2020 hearing).

30. [17-23305-E-13](#) **CHERRI DA ROZA** **MOTION TO MODIFY PLAN**
[CYB-1](#) **Candance Brooks** **4-23-20 [89]**

Final Ruling: No appearance at the June 2, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 23, 2020. By the court’s calculation, 40 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Cherri Da Roza (“Debtor”), has filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Response indicating on May 18, 2020. Dckt. 97.

Debtor filed a Supplemental Declaration to correct the original declaration filed with the plan indicated an incorrect amount and clarified that the correct plan payment is in the amount of \$735.00, which is the same amount as the one stated in the Plan. Dckt. 99.

The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Cherri Da Roza (“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 April 23, 2020, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

Final Ruling: No appearance at the June 2, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on April 17, 2020. By the court's calculation, 46 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is granted.

The debtor, Lynette Edwards ("Debtor") seeks confirmation of the Modified Plan to extend the plan after encountering several problems, such as health issues and reliance that the Social Security Administration is overloaded with work and has yet to process her claim. Declaration, Dckt. 68. The Modified Plan provides payments of \$350.00 for 56 months, and a 0% percent dividend to unsecured claims totaling \$30,372.83. Modified Plan, Dckt. 67. 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 May 18, 2020. Dckt. 75. Trustee believes that Debtor has adequately pleaded for the extension of the Plan past 60 months under the CARES Act, due to reliance on the Social Security Administration processing her claim, and Debtor noting that "the social security administration is overloaded with work," which meets the criteria of "material financial hardship" that is "directly or indirectly due" to the COVID-19 health crisis. *Id.*

DISCUSSION

Debtor seeks to modify the plan to extend the Plan past 60 months relying on the recently passed Coronavirus Aid, Relief and Economic Security Act (CARES Act) which provides for lengthening Chapter 13 plan terms to allow consumers to successfully complete their Chapter 13 plans.

Review of CARES Act

The court begins consideration of the request with the recently passed CARES Act. Under the Act, as it pertains to Chapter 13 debtors, Congress added subsection (d)(1) to 11 U.S.C. § 1329 to permit a debtor to modify a confirmed plan due to events flowing from the current COVID-19 pandemic. The new language in this section enacted by Congress states:

(d)

(1) Subject to paragraph (3), for a plan confirmed prior to the date of enactment of this subsection, the plan may be modified upon the request of the debtor if—

(A) the debtor is experiencing or has experienced a material financial hardship due, directly or indirectly, to the coronavirus disease 2019 (COVID-19) pandemic; and

(B) the modification is approved after notice and a hearing.

(2) A plan modified under paragraph (1) may not provide for payments over a period that expires more than 7 years after the time that the first payment under the original confirmed plan was due.

(3) Sections 1322(a), 1322(b), 1323(c), and the requirements of section 1325(a) shall apply to any modification under paragraph (1).

Restating the above statutory provisions relied upon by the Debtor into a “punch-list” for application in a bankruptcy case:

- If for a pre-March 27, 2020 confirmed Chapter 13 plan a debtor is:
 - experiencing or has experienced a “material financial hardship”
 - that is directly or indirectly due to the COVID-19 pandemic
- then the Chapter 13 plan may be modified to provide for making payments over a seven year period (two years longer than the normal five year maximum imposed by Congress under 11 U.S.C. § 1322(d)).
- Such modification to a longer period than five years continues to be subject to the contents of a plan requirements of 11 U.S.C. § 1322(a)(b), and (c), as well as the plan confirmation requirements of 11 U.S.C. § 1325(a).

Here, Debtor argues that she is experiencing hardship due “directly or indirectly” to the

COVID-9 health crisis. The Motion states with particularity the grounds required for modification of a Chapter 13 Plan, namely that the Social Security Administration is overloaded with work due to the health crisis and her claim for assistance has not yet been processed. Motion, Dckt. 68. Having identified the proper grounds for extending the plan under the CARES Act, the court allows the modification of this plan for an extended period of time of 84 months.

The Modified Plan complies with the conditions listed under the CARES Act, and is confirmed.

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Lynette Edwards (“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 April 17, 2020, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Final Ruling: No appearance at the June 2, 2020 Hearing is required.

Local Rule 9014-1(f)(1) Motion—No 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 April 17, 2020. By the court’s calculation, 46 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion. The defaults of the non-responding parties in interest are entered.

The Motion to Confirm the Amended Plan is denied.

The debtor, Sandra Avalos (“Debtor”), seeks confirmation of the Amended Plan. The Amended Plan provides for monthly payments of \$130.00 for 36 months, and an 18% dividend to unsecured claims totaling \$8,420.00. Amended Plan, Dckt. 31. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

Debtor filed a statement concurring in the denial of the plan as proposed, and will file a new plan and new motion to confirm intended to address issues identified by the Trustee. Dckt. 36.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on May 13, 2020. Dckt. 33. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor has not completed a 341 meeting.
- B. Debtor is delinquent under the plan.

- C. Debtor's plan is not her best effort.
- D. Debtor's plan is not proposed in good faith.

DISCUSSION

Failure to Appear at 341 Meeting

Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Appearance is mandatory. *See* 11 U.S.C. § 343. Attempting to confirm a plan while failing to appear and be questioned by 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 original Meeting of Creditors was scheduled for January 9, 2020. Continued Meetings of Creditors were held on February 6, 2020, March 5, 2020, and April 30, 2020. The Debtor did not appear at the January 9, February 6, or April 30 meetings, and the Debtor's attorney did not appear at the March 5 meeting. Trustee has set a continued Meeting of Creditors for May 21, 2020 at 1:00 p.m.

Delinquency

The Chapter 13 Trustee asserts that Debtor is \$50.00 delinquent in plan payments, which represents a portion of one month of the \$130.00 monthly plan payment. Before the hearing, another plan payment will be due. According to the Chapter 13 Trustee, the Plan in § 2.01 calls for payments to be received by the Chapter 13 Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Debtor's Not Best Effort

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

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

The Plan proposes to pay a 18 percent dividend to unsecured claims, which total \$8,420.00, though Debtor's projected disposable income under 11 U.S.C. § 1325(b)(2) totals \$220.00 per month. Thus, the court may not approve the Plan.

NOT PROPOSED IN GOOD FAITH

The Motion states that the unsecured claims came in lower than expected which would allow for an increased percentage to be paid to these unsecured creditors. Yet, Debtor does not specifically

state that the plan payment is being lowered nor does she explain why the payment is being lowered. On the contrary, in her declaration, Debtor states that “[the] payment has not changed.” Dckt. 28.

On May 26, 2020, Debtor filed a Non-Opposition stating that Debtor does not oppose Trustee’s opposition and that an amended Plan will be filed to address Trustee’s issues, which will be calendared for after the continued 341 meeting set for June 11, 2020. Dckt. 36.

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

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Sandra Anabel Avalos (“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.

Final Ruling: No appearance at the June 2, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on April 21, 2020. By the court’s calculation, 42 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Margo Karen Shugart-Young (“Debtor”), has filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Response indicating non-opposition on May 18, 2020. Dckt. 23. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Margo Karen Shugart-Young (“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 April 21, 2020, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

34. [20-21244-E-13](#) **MAJID FOROUTAN AND** **OBJECTION TO CONFIRMATION OF**
[APN-1](#) **FOROZAN TEHRANI** **PLAN BY TOYOTA MOTOR CREDIT**
34 thru 36 **Scott Hughes** **CORPORATION**
4-30-20 [23]

Final Ruling: No appearance at the June 2, 2020 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors’ Attorney, Chapter 13 Trustee, and Office of the United States Trustee on April 30, 2020. By the court’s calculation, 33 days’ notice was provided. 14 days’ notice is required.

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

Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion. The defaults of the non-responding parties in interest are entered.

The Objection is sustained, and the proposed Chapter 13 Plan is not confirmed.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Subsequent to the filing of this Objection, Debtor filed an Amended Plan and corresponding Motion to Confirm on May 21, 2020 . Dekts. 33, 36. Filing a new plan is a *de facto* withdrawal of the pending plan. 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 Confirmation the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

35. [20-21244-E-13](#) **MAJID FOROUTAN AND** **OBJECTION TO CONFIRMATION OF**
[DPC-1](#) **FOROZAN TEHRANI** **PLAN BY DAVID P. CUSICK**
 Scott Hughes **5-6-20 [29]**

Final Ruling: No appearance at the June 2, 2020 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors and Debtors’ Attorney on May 6, 2020. By the court’s calculation, 27 days’ notice was provided. 14 days’ notice is required.

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

Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion. The defaults of the non-responding parties in interest are entered.

The Objection is sustained, and the proposed Chapter 13 Plan is not confirmed.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Subsequent to the filing of this Objection, Debtor filed an Amended Plan and corresponding Motion to Confirm on May 21, 2020 . Dckts. 33, 36. Filing a new plan is a *de facto* withdrawal of the pending plan. The Objection is sustained, and the plan is not confirmed.

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

Final Ruling: No appearance at the June 2, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 24, 2020. 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 Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Elizabeth Olga Robinson (“Debtor”), has filed the Declaration of Elizabeth Olga Robinson in support of confirmation. Dckt. 45. Debtors seek to modify the Plan to reduce the plan payment to \$0.00 for three (3) months and reduce the percentage to unsecured creditors from 100% to 90%. Debtor testifies that the modification is necessary after having been furloughed due to COVID-19. Declaration, Dckt. 45.

The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Response indicating non-opposition on May 20, 2020. Dckt. 49. Trustee is satisfied that Debtors address the circumstances causing the modification which is based on both Debtor and non-filing spouse having been furloughed due to COVID-19.

The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, as expanded by the CARES Act amendments, and is confirmed.

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

Final Ruling: No appearance at the June 28, 2020 Hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtors, Debtor's Attorney, Creditor Santander Consumer USA, Inc., and Chapter 13 Trustee as stated on the Certificate of Service on April 15, 2020. The court computes that 20 days' notice has been provided.

The court issued an Order to Show Cause based on Creditor's failure to pay the required fees in this case: \$25.00 due on March 30, 2020.

The Order to Show Cause is discharged, no appearances at the June 2, 2020 are required, and no sanctions are ordered.

The court's docket reflects that the default in payment that is the subject of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Creditor Santander Consumer USA, Inc.: \$25.00.

No response has been filed by Creditor. As stated in the Order to Show Cause, Creditor Santander and Counsel are ordered to appear and explain why this court should not impose monetary corrective sanctions and/or have it referred to the District Court for the exercise of district judge's power to impose sanctions.

At the May 5, 2020 hearing, no appearance was made by Santander Consumer USA, Inc. or its counsel.

The court continued the hearing, further requiring the attendance of Santander Consumer USA, Inc. and its attorney at the continued Hearing, and if it fails to appear, the court will order \$2,500.00 in corrective sanctions and continue for further hearing, and increasing corrective sanction of \$25,000.00 for further failure to appear.

Supplemental Pleadings and Payment

On May 27, 2020 Creditor Santander filed a Response. Dckt. 84. Creditor also filed the Declaration of David Hemingway, the Declaration of Steven E. Ernest, and the Declaration of Byron J. Bahr in support of the Response. Dckts. 85, 86, 87. Additionally, Creditor filed seven (7) exhibits: Exhibits A - G. Dckt. 88.

Creditor explains that their failure to pay the fee was the result of an employee error due to

transitions to work at home environments caused by the COVID-19 stay at home orders, and that Creditor has instituted new practices to prevent such errors from reoccurring. Response, pp. 4-5. Creditor also explains that it was unaware of the Order to Show Cause as both the Notice of Payment Due and the Order to Show Cause were sent to the wrong postal box address. *Id.* at 6. Creditor further expounds that it takes its obligations to the court seriously and did not purposefully fail to appear at the hearing. *Id.* at 7.

The court understands that mistakes can happen and our current situation can cause inadvertent errors as we all incorporate new practices to address the stay at home orders.

Creditor showing good cause for failing to pay the fee and the court's docket reflecting that the default in payment that is the subjection of the Order to Show Cause was cured on May 8, 2020, the Order to Show Cause is discharged.

Checking Court Records

The response indicates a question may exist as to the addresses used by the court and the BNC in sending notices and orders to Creditor. The court shall direct to the Clerk of the Court this matter for the Clerk's review of the information used by this court and the BNC (as well as possibly other courts) for issuing these types of orders to show cause (and other orders) to determine if there was a clerical error or other matter that needs to be corrected.

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 Order to Show Cause 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 Order to Show Cause is discharged, no sanctions ordered, and the bankruptcy case shall proceed in this court.

Final Ruling: No appearance at the June 2, 2020 Hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, Creditor, and Chapter 13 Trustee as stated on the Certificate of Service on April 15, 2020. The court computes that 20 days' notice has been provided.

The court issued an Order to Show Cause based on Santander Consumer USA, Inc. failure to pay the required fees in this case: \$25.00 due on March 30, 2020.

The Order to Show Cause is discharged, no appearances are required, and no sanctions are ordered.

The court's docket reflects that the default in payment that is the subject of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: \$25.00. No response has been filed by Creditor.

No response has been filed by Creditor. As stated in the Order to Show Cause, Creditor Santander and Counsel are ordered to appear and explain why this court should not impose monetary corrective sanctions and/or have it referred to the District Court for the exercise of district judge's power to impose sanctions.

No response has been filed by Creditor. As stated in the Order to Show Cause, Creditor Santander and Counsel are ordered to appear and explain why this court should not impose monetary corrective sanctions and/or have it referred to the District Court for the exercise of district judge's power to impose sanctions.

At the May 5, 2020 hearing, no appearance was made by Santander Consumer USA, Inc. or its counsel.

The court continued the hearing, further requiring the attendance of Santander Consumer USA, Inc. and its attorney at the continued Hearing, and if it fails to appear, the court will order \$2,500.00 in corrective sanctions and continue for further hearing, and increasing corrective sanction of \$25,000.00 for further failure to appear.

Supplemental Pleadings and Payment

On May 27, 2020 Creditor Santander filed a Response. Dckt. 28. Creditor also filed the

Declaration of David Hemingway, the Declaration of Steven E. Ernest, and the Declaration of Byron J. Bahr in support of the Response. Dckts. 29, 30, 31. Additionally, Creditor filed seven (7) exhibits: Exhibits A - G. Dckt. 32.

Creditor explains that their failure to pay the fee was the result of an employee error due to transitions to work at home environments caused by the COVID-19 stay at home orders, and that Creditor has instituted new practices to prevent such errors from reoccurring. Response, pp. 4-5. Creditor also explains that it was unaware of the Order to Show Cause as both the Notice of Payment Due and the Order to Show Cause were sent to the wrong postal box address. *Id.* at 6. Creditor further expounds that it takes its obligations to the court seriously and did not purposefully fail to appear at the hearing. *Id.* at 7.

The court understands that mistakes can happen and our current situation can cause inadvertent errors as we all incorporate new practices to address the stay at home orders.

Creditor showing good cause for failing to pay the fee and the court's docket reflecting that the default in payment that is the subjection of the Order to Show Cause was cured on May 8, 2020, the Order to Show Cause is discharged.

Checking Court Records

The response indicates a question may exist as to the addresses used by the court and the BNC in sending notices and orders to Creditor. The court shall direct to the Clerk of the Court this matter for the Clerk's review of the information used by this court and the BNC (as well as possibly other courts) for issuing these types of orders to show cause (and other orders) to determine if there was a clerical error or other matter that needs to be corrected.

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 Order to Show Cause 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 Order to Show Cause is discharged, no sanctions ordered, and the bankruptcy case shall proceed in this court.

Final Ruling: No appearance at the June 2, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 21, 2020. By the court’s calculation, 42 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtors, Roberto Cota and Tania Yamilet Castillo Cota (“Debtors”), have filed their Declaration in support of confirmation. Dckt. 22. Debtors explain their modification is necessary on the basis that Mrs. Cota has lost her job and Mr. Cota’s hours have been reduced as a direct result of the COVID-19 pandemic.

The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Non-Opposition indicating non-opposition on May 20, 2020. Dckt. 30. Trustee does not oppose on the basis that Debtor seems to meet the criteria for extending the life of the plan beyond sixty months due to COVID-19 pandemic related issues. *Id.*

DISCUSSION

Debtors seek to modify the plan to extend the Plan past 60 months relying on the recently passed Coronavirus Aid, Relief and Economic Security Act (CARES Act) which provides for lengthening Chapter 13 plan terms to allow consumers to successfully complete their Chapter 13 plans.

Review of CARES Act

The court begins consideration of the request with the recently passed CARES Act. Under the Act, as it pertains to Chapter 13 debtors, Congress added subsection (d)(1) to 11 U.S.C. § 1329 to permit a debtor to modify a confirmed plan due to events flowing from the current COVID-19 pandemic. The new language in this section enacted by Congress states:

(d)

(1) Subject to paragraph (3), for a plan confirmed prior to the date of enactment of this subsection, the plan may be modified upon the request of the debtor if—

(A) the debtor is experiencing or has experienced a material financial hardship due, directly or indirectly, to the coronavirus disease 2019 (COVID-19) pandemic; and

(B) the modification is approved after notice and a hearing.

(2) A plan modified under paragraph (1) may not provide for payments over a period that expires more than 7 years after the time that the first payment under the original confirmed plan was due.

(3) Sections 1322(a), 1322(b), 1323(c), and the requirements of section 1325(a) shall apply to any modification under paragraph (1).

Restating the above statutory provisions relied upon by the Debtor into a “punch-list” for application in a bankruptcy case:

- If for a pre-March 27, 2020 confirmed Chapter 13 plan a debtor is:
 - experiencing or has experienced a “material financial hardship”
 - that is directly or indirectly due to the COVID-19 pandemic
- then the Chapter 13 plan may be modified to provide for making payments over a seven year period (two years longer than the normal five year maximum imposed by Congress under 11 U.S.C. § 1322(d)).
- Such modification to a longer period than five years continues to be subject to the contents of a plan requirements of 11 U.S.C. § 1322(a)(b), and (c), as well as the plan confirmation requirements of 11 U.S.C. § 1325(a).

Here, Debtors argue that they are experiencing hardship due “directly” to the COVID-9 health crisis. The Motion states with particularity the grounds required for modification of a Chapter 13 Plan, namely Mrs. Cota has lost her job at a pediatric dentist office and Mr. Cota’s work hours at a refinery have been reduced due to the stay-at-home orders related to the COVID-19 pandemic. Declaration, Dckt. 22. Having identified the proper grounds for extending the plan under the CARES Act, the court allows the modification of this plan for an extended period of time of 68 months.

The Modified Plan complies with the conditions listed under the CARES Act, and is confirmed.

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtors, Roberto Cota and Tania Yamilet Castillo Cota (“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 April 21, 2020, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

Final Ruling: No appearance at the June 2, 2020 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor’s Attorney, Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on March 31, 2020. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

The Court having entered an order (Dckt. 138) granting the Motion, the matter is removed from the calendar.