

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

July 2, 2019 at 2:00 p.m.

Notice

The court has reorganized the cases, placing all of the Final Rulings in the second part of these Posted Rulings, with the Final Rulings beginning with Item 21.

1.	19-22515-C-13 DPC-1	SATESHIA EDNEY Matthew J. Gilbert	OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 6-10-19 [24]
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Thru #2

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 Counsel on June 10, 2019. By the court's calculation, 22 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 -----
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The Objection to Confirmation of Plan is sustained.

July 2, 2019 at 2:00 p.m.
Page 1 of 57

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

A. Debtor failed to appear and be examined at the First Meeting of Creditors held on June 6, 2019. Trustee does not have sufficient information to determine if the Plan is suitable for confirmation. The meeting has been continued to July 25, 2019 at 1:00 p.m.

B. Debtor is \$4,132.00 delinquent in Plan payments and the next scheduled payment of \$4,132.00 was due on June 25, 2019. The Plan in § 2.01 calls for payments to be received by the Trustee not later than the 25th day of each month beginning the month after the order for relief under Chapter 13. Debtor has paid \$0.00 into the Plan to date.

DISCUSSION

Trustee’s objections are well-taken. Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Appearance is mandatory. *See* 11 U.S.C. § 343. Attempting to confirm a plan while failing to appear and be questioned by Trustee and any creditors who appear represents a failure to cooperate. *See* 11 U.S.C. § 521(a)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1). The Continued Meeting of Creditors was moved to July 25, 2019 at 1:00 p.m.

Debtor is \$4,132.00 delinquent in plan payments, which represents one month of the \$4,132.00 plan payment. Before the hearing, another plan payment will be due. According to Trustee, the Plan in § 2.01 calls for payments to be received by Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

The 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 Counsel, Chapter 13 Trustee, and Office of the United States Trustee on June 4, 2019. By the court’s calculation, 28 days’ notice was provided. 14 days’ notice is required.

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

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The Objection to Confirmation of Plan is sustained.

TD Auto Finance LLC. (“Creditor”) holding a secured claim opposes confirmation of the Plan on the basis that:

A. Debtor’s proposed Plan fails to provide for the present value of Creditor’s secured claim by failing to provide the proper “formula” discount rate. Creditor argues that the “formula approach” requires the Court to take the national prime rate of interest and adjust this rate to compensate for an increased risk of default posed by Debtor. The national prime rate of interest as of June 3, 2019 was 5.05%. Exhibit C, Dckt. 22. The Plan provides for repayment of Creditor’s secured claim over a period of time which extends approximately 26 months beyond the original terms of the Contract and therefore Creditor is exposed to additional risk.

B. Debtor lists the Vehicle in Class 2 of the proposed Chapter 13 Plan. Debtor incorrectly lists “N” under Purchase Money Security Interest personal property. Creditor holds a purchase money security interest and is entitled to pre-

confirmation adequate protection payments.

DISCUSSION

Creditor's objections are well-taken. Creditor objects to the confirmation of the Plan on the basis that the Plan fails to provide for the present value of Creditor's secured claim by failing to provide the proper "formula" discount rate in conformance with 11 U.S.C. § 1325(a)(5)(B)(ii). Creditor's claim is secured by a Purchase Money Security Interest. Creditor argues that this interest rate is outside the limits authorized by the Supreme Court in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). In *Till*, a plurality of the Court supported the "formula approach" for fixing post-petition interest rates. *Id.* Courts in this district have interpreted *Till* to require the use of the formula approach. *See In re Cachu*, 321 B.R. 716 (Bankr. E.D. Cal. 2005); *see also Bank of Montreal v. Official Comm. of Unsecured Creditors (In re American Homepatient, Inc.)*, 420 F.3d 559, 566 (6th Cir. 2005) (*Till* treated as a decision of the Court). Even before *Till*, the Ninth Circuit had a preference for the formula approach. *See Cachu*, 321 B.R. at 719 (citing *In re Fowler*, 903 F.2d 694 (9th Cir. 1990)).

The court agrees with the court in *Cachu* that the correct valuation of the interest rate is the prime rate in effect at the commencement of this case plus a risk adjustment. Because the creditor has only identified risk factors common to every bankruptcy case, the court fixes the interest rate as the prime rate in effect at the commencement of the case, 5.50%, plus a 1.00% risk adjustment, for a 6.50% interest rate. The objection to confirmation of the Plan on this basis is sustained. *See* 11 U.S.C. § 1325(a)(5)(B)(ii).

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

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

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

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

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

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 Counsel on June 11, 2019. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

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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. All sums required by the plan have not been paid and Debtor may not be able or willing to make plan payments based on their current delinquency under the pending plan. Debtor has paid a total of \$0.00 into his plan. Debtor will have additional payments due prior to the hearing in the amount of \$110.00 on June 25, 2019. Debtor will have to pay \$220.00 by the date of the hearing to be current.

B. It is unclear if Debtor can make payments under the plan or comply with the plan. The Plan proposes a \$110.00 monthly plan payment and the Debtor's Schedule J reflects disposable income of \$110.00. However, Debtor's Schedule I lists \$718 as other monthly income derived from Debtor's tax refund. (Dckt. 1, page 27, line 8h). Debtor's tax refund is not a reoccurring monthly income source. Furthermore, Debtor's Schedule B lists Debtor's bank accounts as having

a total of \$150.19 as of the date of filing the Voluntary Petition on April 30, 2019. (Dckt. 1, page 14, question 17). Accordingly, Trustee is unsure if Debtor can make plan payments or comply with the plan.

DISCUSSION

Trustee's objections are well-taken. Debtor is \$110.00 delinquent in plan payments, which represents one month of the \$110.00 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. Debtor must pay \$220.00 by the date of the hearing to be current. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor's Schedule I states that Debtor anticipates monthly income of \$718.00 from his tax return. It is not clear to the court how Debtor can make all required payments in the months where Debtor is not receiving a tax refund. 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.

4. [19-22728-C-13](#) **JAMES CASTON AND DEBORAH CLARK-CASTON** **OBJECTION TO CONFIRMATION OF PLAN BY SOLANO FIRST FEDERAL CREDIT UNION**
[TJS-1](#) **Peter G. Macaluso** **6-13-19 [22]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Counsel, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on June 13, 2019. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

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

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The Objection to Confirmation of Plan is **xxxx.**

Solano First Federal Creditor Union ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that Debtor has proposed to repay its claim with 4.00% interest over the life of the Plan. The contract rate of interest on this loan is 16.990%.

Creditor argues that Debtor's Plan should provide a higher rate of interest to be paid to the lender. Creditor believes that it is entitled to be paid interest on its claim at the rate of at least Prime + 3%. Based upon the risk factors including description of the collateral and bankruptcy filing, Creditor believes that a 3% risk factor is most appropriate. The current prime rate is 5.50% and, based on Creditor's proposal, would result in an 8.50% adjusted interest rate. Debtor proposes a 4.00% interest rate which is less than the current national prime rate and inappropriate according to Creditor. Creditor argues that because of Debtor's bankruptcy filing, the length of the Plan and the fact that the Vehicle is a rapidly depreciating asset, Creditor is entitled to an increased interest rate.

DEBTOR'S RESPONSE:

Debtors filed a response on June 21, 2019. Dckt. 33. The Debtors agree to increase the interest rate provided for Creditor's claim from 4% to 8.5%, increasing the monthly dividend to \$445.00. Debtors further request that the change be provided for in an Order confirming the Plan.

DISCUSSION

Creditor's objections are well-taken. Creditor objects to the confirmation of the Plan on the basis that the Plan calls for adjusting the interest rate on its loan with Debtor to 4.00%. Creditor's claim is secured by a lien and security interest on a 2015 Harley Davidson FLTRXS Vin No. 1HD1KTM39FB632799. Creditor argues that this interest rate is outside the limits authorized by the Supreme Court in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). In *Till*, a plurality of the Court supported the "formula approach" for fixing post-petition interest rates. *Id.* Courts in this district have interpreted *Till* to require the use of the formula approach. *See In re Cachu*, 321 B.R. 716 (Bankr. E.D. Cal. 2005); *see also Bank of Montreal v. Official Comm. of Unsecured Creditors (In re American Homepatient, Inc.)*, 420 F.3d 559, 566 (6th Cir. 2005) (*Till* treated as a decision of the Court). Even before *Till*, the Ninth Circuit had a preference for the formula approach. *See Cachu*, 321 B.R. at 719 (citing *In re Fowler*, 903 F.2d 694 (9th Cir. 1990)).

The court agrees with the court in *Cachu* that the correct valuation of the interest rate is the prime rate in effect at the commencement of this case plus a risk adjustment. Because the creditor has only identified risk factors common to every bankruptcy case, the court fixes the interest rate as the prime rate in effect at the commencement of the case, 5.05%, plus a 3% risk adjustment, for a 8.05% interest rate. The objection to confirmation of the Plan on this basis is sustained. *See* 11 U.S.C. § 1325(a)(5)(B)(ii).

At the hearing the parties ---

~~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 Solano First Federal Creditor Union ("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 Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 28, 2019. By the court’s calculation, 35 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

The Motion to Confirm the Modified Plan is denied.

The debtors, Steve Floyd and Nicole Williams (“Debtor”) seek confirmation of the Modified Plan because of reductions in income and unexpected medical expenses that resulted in delinquency in plan payments under the confirmed plan. Declaration, Dckt. 53. The Modified Plan seeks to increase monthly payments, from \$2,782.00 to \$2,802.00, beginning in June 2019, for the duration of the Plan. The Modified Plan reduces the dividend to general unsecured claims from 10 percent to 9 percent. Motion to Confirm, Dckt. 50. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on June 17, 2019. Dckt. 59. The Trustee opposes confirmation on the grounds that:

- A. the proposed reductions in expenses may not be tenable over the long term, given Debtor’s reduced income levels and the uncertainty with regard to when Debtor will be physically able to return to work.

- B. Debtor's modified plan proposes to add \$1821.00 in post-petition arrears where no post-petition arrears currently exist. Trustee, consequently, is uncertain if Debtor seeks to make additional payments so Debtor may more easily resume mortgage payments when the Plan completes.
- C. Section 7.02 of the modified plan proposes a total paid through May, 2019 of \$16,706.96, where Debtor has actually paid in total an additional \$0.96 of that amount. Trustee would not object if this error were corrected in the order confirming.

DISCUSSION

The Trustee's objections are well-taken. Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). The modified plan proposes significant reductions in monthly expenses, including \$225.00 reductions for electricity/heat, \$297.00 for telephone/cell, and \$450.00 for food. Debtor must feed a household of 5; a meager \$650.00 monthly food budget seems insufficient. Moreover, neither Debtor's Motion to Confirm nor Declaration in support thereof provides information as to when (or if) Debtor's injured femur will allow her to return to work. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable

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

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtors, Steve Floyd and Nicole Williams ("Debtor"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 23, 2019. By the court's calculation, 40 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is granted.

The debtors, Brian and Tracee Stacy ("Debtor"), seek confirmation of the First Amended Plan. Declaration, Dckt. 28. The Plan provides for full payment of Debtor's payment delinquencies, including a delinquent first mortgage payment and tax debts owed to the Internal Revenue Service and the California Franchise Tax Board that were not provided for in the original plan. Amended Plan, Dckt. 31. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee") filed an Opposition on June 7, 2019. Dckt. 35. The Trustee objects to Debtor's First Amended Plan on the basis that Debtor is \$2,933.14 delinquent in Plan payments to date. Debtor has paid \$3,593.36 into the plan to date.

DEBTOR'S SUPPLEMENTAL DECLARATION:

On June 25, 2019, Debtor filed a Supplemental Declaration stating that a TFS payment for the delinquency has been scheduled for June 24, 2019. Dckt. 41.

DISCUSSION

The Trustee's Objections are well-taken.

The Chapter 13 Trustee asserts that Debtor is \$2,933.14 delinquent in plan payments, which represents less than one month of the \$3,979.82 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 provided a Declaration that payments are scheduled for June 24, 2019 a promise to pay does not resolve the Objection.

At the hearing —

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

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

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

~~The Motion to Confirm the Chapter 13 Plan filed by the debtors, Brian and Tracee Stacy ("Debtor"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing;~~

~~**IT IS ORDERED** that the Motion to Confirm the Plan is granted, and Debtor's Amended Chapter 13 Plan filed on May 22, 2019, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick ("the Chapter 13 Trustee") for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 25, 2019. By the court's calculation, 38 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

~~The Motion for Allowance of Professional Fees is granted.~~

Mary Ellen Terranella, the Attorney ("Applicant") for Raul Navarro and Maria Navarro, Debtor in Possession ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period June 5, 2018, through July 2, 2019. The order of the court approving employment of Applicant was entered on June 6, 2018. Dckt. 42. Applicant requests fees in the amount of \$1,061.20 and costs in the amount of \$61.20.

APPLICABLE LAW

Reasonable Fees

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

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

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

Lodestar Analysis

For bankruptcy cases in the Ninth Circuit, “the primary method” to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves “multiplying the number of hours reasonably expended by a reasonable hourly rate.” *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate, however. *See id.* (citing *Unsecured Creditors’ Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

Reasonable Billing Judgment

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

- (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?
- (b) To what extent will the estate suffer if the services are not rendered?

(c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

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

A review of the application shows that Applicant’s services for the Estate include post confirmation representation and filing of an opposition to the Motion to Dismiss the Case and Motion to Modify Plan After Confirmation. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Administration: Applicant spent 1.1 hours in this category. Applicant reviewed the substitution order and reviewed the case file and the court docket.

Significant Motions and Other Contested Matters: Applicant spent 8.4 hours in this category. Applicant sent a letter to clients about the Motion to Dismiss the case. Applicant prepared and filed an opposition to the motion. Applicant reviewed the tentative ruling and appeared at the hearing about the motion. Applicant discussed the modification with debtor’s grandson. Applicant prepared and filed a status report, declaration, points and authorities and exhibits. Applicant met with client to review the documents and the Trustee’s report. Applicant appeared at hearing on Motion to Modify Plan After Confirmation. Applicant prepared an order Modifying Plan and submitted it to the court.

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The persons providing the services, the time for which compensation is requested, and the hourly rates are:

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Mary Ellen Terranella	0.10	\$350.00	\$35.00
Mary Ellen Terranella	1.00	\$350.00	\$350.00
Mary Ellen Terranella	0.10	\$350.00	\$35.00
Mary Ellen Terranella	1.00	\$350.00	\$350.00
Mary Ellen Terranella	0.10	\$350.00	\$35.00
Mary Ellen Terranella	1.00	\$350.00	\$350.00

Mary Ellen Terranella	0.30	\$350.00	\$105.00
Mary Ellen Terranella	0.50	\$350.00	\$175.00
Mary Ellen Terranella	3.00	\$350.00	\$1,050.00
Mary Ellen Terranella	1.00	\$350.00	\$350.00
Mary Ellen Terranella	.10	\$350.00	\$35.00
Mary Ellen Terranella	1.00	\$350.00	\$350.00
Mary Ellen Terranella	.20	\$350.00	\$70.00
Total Fees for Period of Application			\$3,290.00

Counsel notes in the application that the total fees for her services amounted to \$3,290.00, but those fees have been discounted to a final total of \$1,061.20. Dckt. 72. Counsel makes no note in the application why such fees were discounted. Seemingly counsel discounted them to \$1,000.00 flat and then added the \$61.20 costs on top of that.

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$1,061.20 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Postage	\$1.53	\$61.20
Total Costs Requested in Application		\$61.20

CHAPTER 13 TRUSTEE RESPONSE:

On June 7, 2019, the Chapter 13 Trustee responded to Debtors’ counsel’s fee request. Dckt. 76. The Trustee flags for the court that the plan was modified in month 49 of a 60 month plan. The Trustee also flags for the court that Debtors have not made any plan payments since February 5, 2019. The Debtors are delinquent \$1,699.00 with a total of \$8,190.79 remaining to be paid to creditors and attorney fees. The Trustee questions whether the fees incurred to file a modified plan were necessary if the Debtors were and still remain delinquent in plan payments.

DISCUSSION

At the hearing the Trustee and Debtors provided the court statements regarding Debtors delinquency -----

FEES AND COSTS & EXPENSES ALLOWED

Fees

Hourly Fees

~~————— The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of \$1,061.20 are approved pursuant to 11 U.S.C. § 331, and subject to final review pursuant to 11 U.S.C. § 330 and authorized to be paid by Debtor in Possession from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 13 case.~~

Costs & Expenses

~~————— First and Final Costs in the amount of \$61.20 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by Debtor in Possession from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 13 case.~~

~~————— Applicant is allowed, and Debtor in Possession is authorized to pay, the following amounts as compensation to this professional in this case:~~

————— Fees	————— \$1,000.00
————— Costs and Expenses	————— \$61.20

~~pursuant to this Application as final fees and costs pursuant to 11 U.S.C. § 330 in this case:~~

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

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

~~————— The Motion for Allowance of Fees and Expenses filed by Mary Ellen Terranella (“Applicant”), Attorney for Raul Navarro and Maria Navarro, Chapter 13 Debtor, (“Client”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing;~~

~~————— **IT IS ORDERED** that Mary Ellen Terranella is allowed the following fees and expenses as a professional of the Estate:~~

~~————— Mary Ellen Terranella , Professional employed by Chapter 13 Debtor~~

————— Fees in the amount of \$1,000.00
————— Expenses in the amount of \$61.20;

~~————— as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for Chapter 13 Debtor.—~~

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 Was Not 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 June 10, 2019. By the court's calculation, 22 days' notice was provided. 28 days' notice is required. Proper notice was not provided.

The Motion to Incur Debt 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 Incur Debt is denied.

Paul Nickson ("Debtor") seeks permission to lease a 2019 GMC Sierra 1500 ("Vehicle") with a down payment of \$1,500.00. The first payment is \$635.25 and the remaining balance of the down payment is \$876.75. Debtor proposes working some overtime and holding a yard sale to raise the funds necessary to make the down payment. Dckt. 34. The total amount of the lease is \$24,306.75 from GM Financial. Exhibit A, Dckt. 35. The term of the lease is 39 months with \$623.25 monthly payments and an interest rate of 0.002725%.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick, ("Trustee") filed an opposition to Debtor's Motion to Incur Debt on June 17, 2019. Dckt. 37. Trustee questions whether this lease is in the best interest in of the Debtor. The Trustee notes that Debtor needs a vehicle to commute to work, it is not clear whether Debtor requires this type of vehicle to make that commute. The Trustee is concerned that Debtor relies on funds derived from a yard sale to fund the purchase. Lastly the Trustee flags for the court that the purchase proposes a monthly payment that is approximately \$18.00 more than he is paying now.

DEBTOR'S RESPONSE

Debtor filed a response on June 25, 2019. Dckt. 40. Debtor argues that he requires a car to get

to and from work and seeking other forms of transportation would increase his expenses and risk his ability to get to and from work. Debtor argues that the down payment directly correlates to the monthly lease payment and in order to decrease the monthly lease payment, he had to increase the down payment. Debtor's Declaration, Dckt. 34. The proposed lease is reasonable according to Debtor because it is only \$18.01 more than what he is currently paying and he believes he can earn enough to pay for the down payment from a garage sale. This is all necessary according to Debtor to ensure he has a vehicle to go to and from work and this offer seems to be the best of what he can find. Dckt. 40.

DISCUSSION

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

Reasonableness

Debtor does not address the reasonableness of incurring debt to lease a brand new vehicle while seeking the extraordinary relief under Chapter 13 to discharge debts. Debtor currently leases a 2016 GMC Sierra at \$605.24 per month. Debtor requests permission to lease another vehicle in part because he "found a good deal on a vehicle." While Debtor repeatedly states that this is the best offer he can find, he provides no evidence to the court of less expensive options or other lease terms that might be more affordable. The Debtor notes that he requires a vehicle to commute to work but does not offer an explanation why Debtor requires a brand new truck to make this commute.

Best Interest of Debtor

Here, the transaction is not in the best interest of Debtor. Debtor's down payment on the vehicle is \$1,500.00, of which he can only pay \$635.25 and plans on holding a yard sale and working overtime to pay off the remaining \$876.75 balance. Dckt. 32.

The Motion is denied.

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

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

The Motion to Incur Debt filed by Paul Nickson("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, and Paul Nickson is not authorized to incur debt pursuant to the terms of the agreement, Exhibit A, Dckt. 35.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 24, 2019. The court set the hearing for July 2, 2019. Dckt. 25.

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

The Motion to Extend the Automatic Stay is granted.

Juan Carlos Alanis (“Debtor”) seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor’s second bankruptcy petition pending in the past year. Debtor’s prior bankruptcy case (No. 19-21866) was dismissed on April 1, 2019, after Debtor, acting pro-se, was unable to file all required documents. *See* Order, Bankr. E.D. Cal. No. 19-21866, Dckt. 28, April 1, 2019. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because Debtor, acting pro-se, was not able to comply with the filing requirements. However, Debtor retained counsel on June 19, 2019, after filing this case, and has since filed the required documents. Dckt. 22, Debtor’s Declaration.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). As this court has noted in other cases, Congress expressly provides in 11 U.S.C. § 362(c)(3)(A) that the automatic stay **terminates as to Debtor**, and nothing more. In 11 U.S.C.

§ 362(c)(4), Congress expressly provides that the automatic stay **never goes into effect in the bankruptcy case** when the conditions of that section are met. Congress clearly knows the difference between a debtor, the bankruptcy estate (for which there are separate express provisions under 11 U.S.C. § 362(a) to protect property of the bankruptcy estate) and the bankruptcy case. While terminated as to Debtor, the plain language of 11 U.S.C. § 362(c)(3) is limited to the automatic stay as to only Debtor. The subsequently filed case is presumed to be filed in bad faith if one or more of Debtor's cases was pending within the year preceding filing of the instant case. *Id.* § 362(c)(3)(C)(i)(I). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* § 362(c)(3)(C).

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

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

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

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

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

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

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

The Motion to Extend the Automatic Stay filed by Juan Carlos Alanis (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

Thru #11

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

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 May 17, 2019. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1). That requirement was met.

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, Timothy Janovich (“Debtor”), seeks confirmation of the First Amended Plan. Declaration, Dckt. 64. The Amended Plan provides that Debtor will be refinancing or selling his real property, located at 2536 & 2532 Michelle Drive, Sacramento, CA 95821 and/or his real property at 703 Main Street, Roseville, Ca 95678. The proceeds from the sale or refinancing will be sufficient to satisfy Debtor’s secured claims provided for in Debtor’s Amended Plan. Dckt. 65. 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 June 14, 2019. Dckt. 71. The court notes that the Opposition appears to pertain to different case and was inadvertently filed in this matter.

CREDITOR’S OPPOSITION

The secured creditor, Wilmington Trust, N.A. (“Creditor”), filed an Opposition on June 18, 2019. Dckt. 74. Creditor opposes Debtor’s proposed plan on the following grounds:

- A. Debtor proposes to value Creditor's total secured claim at \$24,431.00, without supporting evidence. Creditor argues the value of the subject property, as determined in Debtor's previous Chapter 11 case, is 110,000.00, which exceeds Creditor's total secured claim of \$80,825.92 by \$29,174.08. Creditor argues that the court should deny Debtor's proposed plan on these grounds, or, alternatively, continue the matter, require Debtor to file a Motion to Value and allow Creditor to obtain an appraisal of the subject property's value.
- B. Debtor's proposed plan fails to pay the full value of Creditor's \$80,825.92 secured claim over the life of the Plan. Creditor calculates Debtor must increase monthly Plan payments to Creditor to approximately \$2,245.17 (plus interest) in order to pay the total secured claim in full within the 36 month term of the proposed plan.
- C. Creditor's claim is included in both Class 2(A) and Class 4.

DISCUSSION

At the hearing -----

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

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

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

~~The Motion to Confirm the Chapter 13 Plan filed by the debtor, Timothy Janovich ("Debtor"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing;~~

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

WELLS FARGO BANK, N.A. VS.

Thru #10

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 5, 2018. 28 days' notice is required. That requirement was met.

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

The Motion for Relief from the Automatic Stay is ~~XXXXX~~.

Wells Fargo Bank, N.A. ("Movant") seeks relief from the automatic stay with respect to Timothy Patrick Janovich's ("Debtor") real property commonly known as 703 Main Street, Roseville, California ("Property"). Movant has provided the Declaration of Rachel Mdarcella Cathcart Love to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Rachel Mdarcella Cathcart Love Declaration states that there are four post-petition defaults in the payments on the obligation secured by the Property, with a total of \$5,591.12 in post-petition payments past due. The Declaration also provides evidence that there are no pre-petition payments in default.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on November 20, 2018. Dckt. 47. Debtor asserts that he filed this Chapter 13 bankruptcy proceeding to prevent the foreclosure on the subject Property. Debtor asserts that

the alleged non-payments were paid through his Chapter 11 bankruptcy; however, the Movant refused tender of the payments from the Chapter 11 administrator. This bankruptcy proceeding was filed as an attempt to pay the alleged arrears to this lender which may have accumulated between the date of confirmation of the Chapter 11 Plan and the date of the filing of this Chapter 13 case. Dckt. 48, Janovich Declaration.

CHAPTER 13 TRUSTEE’S RESPONSE:

The Trustee responds that he does not oppose the Motion. The Trustee flags for the court that the Movant is included in Debtor’s proposed Plan as both a Class 2A creditor with regard to the mortgage arrears and as a Class 4 creditor regarding the first mortgage. The Trustee further notes that the Debtor has not filed a Motion to Confirm the Plan and was notified in September that an Amended Plan would be file, but to date has not been filed. Dckt. 45.

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the total debt secured by this property is determined to be \$126,934.02, as stated in the Rachel Mdarcella Cathcart Love Declaration and Schedule D. The value of the Property is determined to be \$304, 952.00, as stated in Schedules A and D.

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because “cause” is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff’d sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments that have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

The court requires additional testimony from the parties in order to determine whether cause exists for terminating the automatic stay, as a result of purported defaults in post-petition payments that have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432. At the December 4, 2018 hearing, the parties agreed to continue the hearing.

JANUARY 29, 2019 HEARING

The January 29, 2019 hearing was continued due to a calendaring error by Debtor’s counsel. The Parties agreed to continue this matter in light of the prior efforts to resolve the matter, which were not completed due to the calendaring error.

MARCH 5, 2019 HEARING

At the March 5, 2019 hearing, it was reported that the payment was received from the Trustee, it was confirmation that the payment applied the post-petition default. The Debtor concurred that the payment applied to the post-petition default. Additionally, Creditor confirmed that there was still \$3,682.24 (two post-petition monthly defaults) in arrears.

APRIL 16, 2019 HEARING

At the April 16, 2019 hearing, the hearing was continued to May 21, 2019 to permit the Debtor additional time to file and serve an amended plan, motion to confirm, and supporting documentation by May 17, 2019. If the amended plan, motion, and supporting documentation are timely filed, the hearing will against be continued to the confirmation hearing date. If the documents are not filed the motion will be granted.

MAY 21, 2019 HEARING

At the May 21, 2019 hearing, the hearing was continued to July 2, 2019. Debtor filed a Status Statement stating that an amended plan has been filed and is set for confirmation hearing on July 2, 2019. The amended Plan provides for the debts to be paid by September 30, 2019, with payment to be funded through a refinancing of the real property.

As stated in the Civil Minutes from the April 16, 2019 hearing, the court would continue the hearing to the July 2, 2019 hearing date. At the hearing the respective counsel concurred in the continuance.

~~At the hearing -----,~~

~~The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the Property.~~

~~————— No other or additional relief is granted by the court.~~

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

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

~~————— The Motion for Relief from the Automatic Stay filed by Wells Fargo Bank, N.A. (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~————— **IT IS ORDERED** that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Wells Fargo Bank, N.A., its agents, representatives, and~~

~~successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed that is recorded against the real property commonly known as 703 Main Street, Roseville, California, (“Property”) to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale to obtain possession of the Property.~~

~~————— No other or additional relief is granted.~~

* * * *

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

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

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 30, 2019. **By the court's calculation, 33 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).**

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

The Motion to Confirm the Modified Plan is continued to July 16, 2019.

As stated, supra, 35 days' notice was required and only 33 days' notice was provided. The Motion to Confirm the Modified Plan is denied.

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 Jared Matthew Varney ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Modified Plan is continued to July 16, 2019.

THE COURT HAS PREPARED THE FOLLOWING ALTERNATIVE RULING IF MOVANT DEMONSTRATES SUFFICIENT NOTICE WAS PROVIDED OR CONVINCES THE COURT

TO PERMIT SHORTENED NOTICE PERIOD

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Jared Matthew Varney (“Debtor”) has filed evidence in support of confirmation. David Cusick (“the Chapter 13 Trustee”) filed a Response indicating non-opposition on June 14, 2019. Dckt. 74. 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 Jared Matthew Varney (“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 May 30, 2019, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick (“the Chapter 13 Trustee”) for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Thru #14

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

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 May 27, 2019. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Plan is granted.

The debtor, Shontell Evette Beasley ("Debtor") seeks confirmation of the Plan. The Plan provides for payments totaling \$13,280.00 through April 2019, and then monthly payments of \$565.00 for 27 months and a 0 percent dividend to unsecured claims; Debtor has paid a total of \$13,280.00 through May 2019. Dckt. 106 (Plan). 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 June 14, 2019. Dckt. 119. Trustee notes that the Plan relies on the Court approving a permanent loan modification. Additionally, the Trustee states that the proposed payments to the Class 2 and Class 2B creditors do not provide for all required payments. Debtor will need to increase monthly plan payments to provide for the Class 2 and Class 2B creditors Opportunity Funding and Santander Consumer USA..

DEBTOR'S REPLY

Debtor filed a Reply to Trustee's Opposition on June 25, 2019. Dckt. 127. Debtor agrees with

the Trustee's assessment of the proposed plan and requests the following changes made:

1. The monthly plan payment be increased to \$642.00 per month;
2. The monthly dividend to secured creditor Opportunity Funding be increased to \$255.00; and
3. The monthly dividend to secured creditor Santander Consumer USA be increased to \$325.00.

DISCUSSION

Debtor agrees that the plan payments need to be increased, and absent an additional objection by the Trustee, the payment increases may be included in an order to confirm. However, a review of Debtor's Plan shows that it relies on the court permitting a loan modification. Debtor has filed a Motion to Approve Loan Modification to be heard on the same day as this Motion. The court notes that the Motion to Approve Loan Modification is reflected in the posted tentative as a final ruling granting the motion. 11 U.S.C. § 1325(a)(6).

At the hearing —

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

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

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

The Motion to Confirm the Chapter 13 Plan filed by Shontell Evette Beasley ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Confirm the Plan is granted, and Debtor's Amended Chapter 13 Plan filed on May 27, 2019, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick ("the Chapter 13 Trustee") for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court

Final Ruling: No appearance at the July 2, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on Mat 27, 2019. By the court’s calculation, 36 days’ notice was provided. 28 days’ notice is required.

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

The Motion to Approve Loan Modification is granted.

The Motion to Approve Loan Modification filed by the debtor, Shontell Beasley (“Debtor”), seeks court approval for Debtor to incur post-petition credit. The creditor, Ditech Financial, LLC (“Creditor”), whose claim the Plan provides for in Class 4, has agreed to a loan modification that will reduce Debtor’s mortgage payment from the current \$2,394.62 per month to \$2,131.41 per month. The modification will capitalize the pre-petition arrears and provide for a fixed interest rate at 5.125 percent over the next 30 years.

The Motion is supported by the Declaration of Shontell Beasley. Dckt. 110. The Declaration affirms Debtor’s desire to obtain the post-petition financing and provides evidence of Debtor’s ability to pay this claim on the modified terms.

CHAPTER 13 TRUSTEE RESPONSE:

On June 17, 2019, the Chapter 13 Trustee filed a response. Dckt. 123. The Trustee flags for the court that Debtor’s Motion to Approve Trial Loan Modification was approved by the court on December 21, 2018. Dckt. 83. Debtor filed an Amended Plan set for Confirmation on July 2, 2019 providing for Creditor in Class 4 and authorizing payments made under the prior Plan in Class 1. The

Trustee has objected to the Debtor's Motion to Confirm Amended Plan but does not oppose the motion to approve the final loan modification.

DISCUSSION:

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

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

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

The Motion to Approve Loan Modification filed by the debtor, Shontell Beasley ("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 court authorizes Shontell Beasley to amend the terms of the loan with the creditor, Ditech Financial, LLC ("Creditor"), which is secured by the real property commonly known as 310 Donegal Drive Vallejo, California, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion. Dckt. 110.

Thru #16

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

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on April 23, 2019. 28 days' notice is required. That requirement was met.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss is granted and this Bankruptcy Case is Dismissed.

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. the debtor has not filed an amended plan since the court sustained the Trustee's Objection to Confirmation on March 5, 2019.

DEBTOR'S RESPONSE

Debtor filed a Response on May 14, 2019. Dckt. 41. Debtor states an amended plan will be filed prior to the hearing date.

May 29, 2019 HEARING

A hearing on the Motion to Dismiss was held on May 29, 2019. At the hearing, the Motion to Dismiss was continued to 2:00 p.m. on July 2, 2019.

DISCUSSION

The court notes that Debtor filed and served an Amended Plan and Motion to Confirm on May 24, 2019. Dckts. 44; 47. The court has reviewed the Motion to Confirm the Amended Plan and the Declaration in support filed by Debtors. Dckts. 44; 46. The Motion may not comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), as the Motion does not state what changes are present in the Amended Plan. The Declaration similarly, does not address how the

deficiencies in the initial Plan have been cured through the Amended Plan in order to support confirmation based upon Debtor's personal knowledge. FED. R. EVID. 601, 602.

Under the terms of the proposed Amended Plan the Debtor is to fund the Plan with \$11,880.00 for the first six months of the plan, which averages \$1,980.00 a month, and then for the remaining sixty-four months of the plan make monthly plan payments of \$7,550.00. Amended Plan, Additional Provision Section 7; Dckt. 47 at 7.

Under the proposed Amended Plan, the following is provided for the payment of claims:

Class 1 Secured Claims Plan ¶ 3.07(c)	Amount of Claim	Monthly Payment
Wells Fargo Post-Petition Arrearage	(\$5,550.00)	\$101.85
Wells Fargo Pre-Petition Arrearage	(\$23,617.70)	\$450.00
Wells Fargo Current Post-Petition Installments		\$5,138.70
Class 2 Secured Claims Plan ¶ 3.08		
Krestas	(\$50,000.00)	\$0.00
Class 3 Secured Claims - Surrender, Plan ¶ 3.09		None
Class 4 Secured Claims - Direct Pay by Debtor, Plan ¶ 3.10.		
McIntosh		\$500.00
Class 5 Priority Unsecured Claims, Plan ¶ 3.12	(\$62,461.95)	\$1,041.04 (over 60 months)
Class 6 Special Treatment Unsecured Claims, Plan ¶ 3.13		None

Class 7 General Unsecured Claims, Plan ¶ 3.14	(\$368,427.67)	\$0.00 (0% dividend)
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Debtor provides a Declaration in support of confirmation. In that Declaration, Debtor states under penalty of perjury that beginning May 25, 2019, Debtor will be making monthly plan payments of \$7,550.00. Dec. ¶ 3, Dckt. 46. No testimony is provided as to how Debtor has \$7,550.00 a month of projected disposable income to fund a plan.

Debtor’s Income and “Business” Information

Debtor previously stated under penalty of perjury of having \$13,000.00 a month in net income from operation of Debtor’s business. Schedule I, Dckt. 1 at 39-40. On Schedule I Debtor lists his employer as Golden Omega, LLC. On Schedule A/B Debtor does not list owning any interest in Golden Omega, LLC. *Id.* at 11-17. Debtor does list an \$8,000.00 receivable due him from Golden Omega, LLC. Schedule A/B Question 38, *Id.* at 16.

In response to Question 19 that asks Debtor to state whether he has any:

19. Non-publicly traded stock and interests in incorporated and unincorporated businesses, including an interest in an LLC, partnership, and joint venture;

Debtor states under penalty of perjury “No.” *Id.* at 14.

On the Bankruptcy Petition Debtor states under penalty of perjury that Debtor is a “sole proprietor” of a business named “Golden Omega, LLC.” *Id.* at 4. However, a limited liability company, like a partnership or corporation, is not a “sole proprietorship.” ^{FN. 1}

 FN. 1. <https://www.sos.ca.gov/business-programs/business-entities/starting-business/types/#sole>, listing this type of business entity as separate from Corporation, Limited Liability Company, Limited Partnership, and Limited Liability Partnership; *Ball v. Steadfast-BLK*, 196 Cal.App. 4th 694, 699 (2011).

When at the Secretary of State website, the court ran the name “Golden Omega, LLC” in the limited liability company search engine to see if Debtor’s assertion that it was just a “sole proprietorship” was correct. The Secretary of State reported that there was no “Golden Omega, LLC” entity registered to do business in California. The court then broadened the search parameters to not require an exact name match and the Secretary of State reports that there is an limited liability company registered with the name “Goldenomega, a Limited Liability Company.

<https://businesssearch.sos.ca.gov/CBS/Detail>.

The Secretary of state identifies Varitimi Pereira at the agent for service of process and the LLC has one manager - that being Varitimi Pereira. See December 7, 2018 filing.

 Debtor states under penalty of perjury on Schedule A/B that Debtor has no office equipment,

furnishings, and supplies used in his business. Question 39, *Id.* at 16.

In response to Question 27 on the Statement of Financial Affairs Debtor states under penalty of perjury that Debtor is a member of a limited liability company, and not a sole proprietorship. *Id.* at 51.

In another twist, on an attachment to Debtor's Form 122C-2 Calculation of Disposable Income, Debtor states, for his purported sole proprietorship Golden Omega, LLC, that he get "50% profits" for which there are no expenses. If it is a "sole" proprietorship, then the "sole" proprietor should get 100% of the profits. Dckt. 1 at 64.

Debtor's Expense Information

However, on Schedule J Debtor stated having (\$11,019.00) in reasonable and necessary expenses, yielding only \$1,981.00 in monthly net income to fund a Chapter 13 plan. *Id.* at 4-42.

Looking at Schedule J, in the (\$11,019.00) is (\$6,513.12) in the home mortgage expense, which appears to include taxes and insurance. *Id.* at 41.

If this mortgage expense is backed out, then Debtor would show having \$8,494.12 a month in net income to fund a plan, more than Debtor now proposes.

Absence of Tax Payments

Under penalty of perjury Debtor states that on \$142,560 (\$11,880 a month x 12 months a year) in annual net income, Debtor does not have to pay:

Any Federal Income Taxes

Any State Income Taxes

Any Self-Employment Taxes (if a "sole proprietorship")

Any Social Security Taxes

Any Unemployment Taxes (if a "sole proprietorship")

See Schedules I and J, Dckt. 1, and Debtor's Declaration, Dckt. 46, for which there is no provision for payment of the above taxes by Debtor.

Other Expenses

In looking at Schedule J, Debtor who has some other questionable expenses. First, Debtor states that his food and housekeeping expenses are only (\$300) a month. Schedule J, Dckt. 1 at 42. Assuming modest housekeeping expenses of only (\$75) a month for a home with a (\$6,513.12) monthly mortgage for the \$1,000,000 value property, that leaves Debtor only (\$225) a month for food - which for a 31 day month is (\$2.42) per meal per day. Not a reasonable sounding food budget for sixty months.

In comparison to the (\$300) a month food and housekeeping supplies expense, under penalty of perjury Debtor states that:

Electricity and heating gas expense is (\$479.88) a month

and

Water, sewer, garbage expense is (\$500.00) a month.

Thus, it costs (\$6,000.00) a year to just heat the residence and run the lights of the \$1,000,000 residence, but only (\$2,700) a year to feed the person paying for the heat and juice.

Debtor, who has no dependant and spouse, lists having a monthly life insurance expense of (\$1,172.00), which totals \$13,064 a year for this Debtor who can only squeeze out a 0.00% dividend for creditors holding general unsecured claims in this Bankruptcy Case.

On Schedule A/B the only life insurance policy listed is a term policy having a value of \$1.00. Dckt. 1 at 15.

Original Plan Filed in this Case

In the original Chapter 13 Plan in this case Debtor listed Wells Fargo Home Mortgage as having a Class 4 Claim. This required Debtor to certify (subject to Fed. R. Bankr. P. 9011) that there was no pre-petition defaults on the obligation to Wells Fargo Home Mortgage. Plan ¶ 3.10, Dckt. 2 at 4.

As now admitted by Debtor in connection with the Amended Plan and Proof of Claim No. 10, there is a substantial pre-petition arrearage that renders the prior certification in proposing the original Plan was false.

In both the original plan and the Amended Plan, Debtor lists a “Craig McIntosh” as receiving a \$500.00 a month payment directly from the Debtor. Amended Plan, ¶ 3.10, Dckt. 47. A review of the Claims Register for this case discloses that no proof of claim has been filed by a “Craig McIntosh.” Only Wells Fargo Bank, N.A. has filed a proof of claim for a secured claim which could be a Class 4 Claim.

RULING

While the Debtor has filed a document titled “Amended Plan” and a motion to confirm, the financial information provided by Debtor does not reflect a debtor who is prosecuting a Chapter 13 case in good faith. It does not reflect a debtor who is seeking relief as permitted under the Bankruptcy Code.

Debtor did file Supplemental Schedules I and J on May 28, 2019. Dckt. 49. Debtor has not attempted to file other amended schedules or statement of financial affairs to address the sole proprietorship-limited liability copy “who owns the business” and “who gets the income” morass in this case.

On Schedule J Debtor states he is “Employed” by Golden Omega, LLC, but he is not paid

wages. He continues to state that he has monthly net income of \$11,550.14 from operating a business - not being an employee of an entity.

On Supplemental Schedule J Debtor states that he has reasonable and necessary monthly expenses of \$7,550.26 or reasonable and necessary monthly expenses (which does not include mortgage/rent/property taxes/insurance) for his family unit of one person.

Again, Amended Schedule J filed under penalty of perjury by Debtor and subject to the Federal Rule of Bankruptcy Procedure 9011 certification by Debtor and Debtor's counsel, continue to state that Debtor pays no state income taxes, no federal income taxes, no Social Security contributions, and no self-employment taxes (if Debtor is not an employee) for his \$138,601.68 in annual net monthly income from his employment/business.

Given that the court has expressly raised this point in prior hearings, one would expect the Debtor and Debtor's counsel, in filing financial information and pursuing confirmation of a Chapter 13 plan in good faith, to address the absence of any income taxes, Social Security contributions, and self-employment taxes being paid by Debtor. None is provided in Debtor's declaration in support of confirmation. Dckt. 46. None is provided in the Supplemental Schedules.

In a Reply to the Trustee's Opposition to Motion to Confirm, Debtor's counsel now reports that "Communication between Debtor and Counsel has broken down." Reply ¶ 1, Dckt. 56. It is further reported that Debtor is seeking new counsel.

Dismissal of this bankruptcy case is consistent with Debtor obtaining new counsel and starting with a "clean slate." Debtor and counsel have used this bankruptcy case to "hang out" without a confirmed plan for eight months. Debtor has persisted in presenting facially defective (false) financial information. To stay in this bankruptcy case Debtor would be burdened by her prior inaccurate statements under penalty of perjury.

Cause has been clearly shown to dismiss this Chapter 13 case pursuant to 11 U.S.C. § 1307(c). Such dismissal, after eight months in this case and Debtor concluding that she wants different counsel (or possibly counsel who will advance the case as Debtor wants as opposed to as provided in the Bankruptcy Code), is consistent with Debtor's desire to change counsel.

The Motion is granted and the case is dismissed.

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 Dismiss the Chapter 13 case 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 Motion to Dismiss is granted and this

Bankruptcy Case is dismissed.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 24, 2019. By the court's calculation, 39 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Plan is denied.

The debtor, Varitimi Pereira ("Debtor") seeks confirmation of the Amended Plan and provides not explanation about how this plan addresses or corrects the objection raised with respect to the initially file plan. Debtor has paid \$11,880.00 into the plan over the last 6 months and proposes making payments of \$7,550.00 per month starting May 25, 2019 continuing for the balance of the plan. Dckt. 46 (Declaration). The Plan will continue for 60 months, Class 1 claims are to be paid by monthly payment of \$5,138.70, Class 2 secured claims are to be paid in full through the plan, and Class 4 claims to Craig McIntosh are deferred during bankruptcy. The plan reflects that attorney fees of \$2,000.00 have been paid with and additional \$4,000.00 to be paid through the plan. The plan proposes that \$1,110.00 of each monthly plan payment shall be administrative expenses. The plan also proposes to pay no less than a 0% dividend to unsecured creditors. Dckt. 47 (Plan). 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 June 7, 2019. Dckt. 51. The Trustee states the following as the basis for his Opposition:

1. Debtor is \$12,488.70 delinquent in plan payments, which represents multiple months of the \$7,550.00 plan payment. Before the hearing, another plan payment will be due. Debtor

has paid a total of \$14,491.30 with the last payment of \$631.30 posted by the Trustee on June 7, 2019. The Plan requires Debtor to increase the payment to \$7,550.00, which the Debtor has not done.

2. Debtor does not provide for George Krestas' (Claim No. 12) nor has Debtor filed an Objection to the claim. Debtor notes on her schedules that the claim is disputed.

3. Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Based on Debtor's Statement of Financial Affairs, (Dckt. 1) Debtor had \$173,997.84 gross income in 2018 prior to filing, but only \$23.00 gross income in 2017 and a negative gross income of \$74,672.00 in 2016. Debtor now claims monthly gross business income as of 5/10/2019 (Dckt. 49) of \$398,000.00 over the 12 months prior to filing. If Debtor's prior statement was also accurate, where the case was filed October 24, 2018, Debtor earned gross income of \$224,002.16 in the last three months of 2018, which averages \$74,667.39 per month.

4. The Trustee is uncertain whether Debtor can make all required plan payments after switching Wells Fargo to a Class 1 creditor in this Amended Plan. The Trustee is not certain whether Debtor made one of the mortgage payments to Wells Fargo that would have been due under the previous proposed plan.

5. The Chapter 13 Trustee states that Debtor proposes 0% dividend to general unsecured creditors while Debtor's non-exempt equity totals \$70,409.00 and proposes to pay \$60,026.00 in priority tax claims. Debtor may not have accurately listed the value of her business Omega, LLC at \$8,000.00 (Dckt. 1) and the real value may be greater. The latest Schedule I now has a detailed business statement showing \$398,000.00 of gross income for the business in the last 12 months (Dckt 49).

6. The Trustee questions whether the proposed plan is the Debtor's best effort. The Trustee notes that Debtor claims rent of approximately \$1,699.25 a month that appears to be paid to Debtor's daughter for the same address as the Debtor's residence. The Plan proposes to pay an obligation to Craig McIntosh in Class 4 for \$500.00 a month, however, the Trustee is not certain this claim exists or is enforceable. The Declaration of Varitimi Pereira states "CRAIG MCINTOSH (DEFERRED DURING BANKRUPTCY). No evidence has been provided that the creditor agrees to this treatment. Dckt 46. Class 4 still lists the monthly obligation as \$500.00. However, the amended Schedule J no longer lists an additional mortgage payment of \$500.00. Dckt 49. Lastly, in the event Debtor's business actually has gross income of \$74,667.39 per month, rather than the \$33,793.00 in the current detailed statement, Debtor has \$40,874.39 of gross business income not currently allocated to an expense.

DEBTOR'S RESPONSE

The Debtor filed a Response to Trustee's Opposition on June 25, 2019. Dckt. 56. Debtor indicates that communication between Debtor and Debtor's Counsel has broken down, Debtor has indicated they are seeking new counsel, and if the instant motion is denied Debtor's Counsel requests the Court allow additional time for Debtor to find new counsel, file, and set an amended Chapter 13 Plan.

DISCUSSION

The Debtor is \$12,488.70 delinquent in plan payments, which represents multiple months of the \$7,550.00 plan payment. Before the hearing, another plan payment will be due. Debtor has paid a total of \$14,491.30. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Based on Debtor's Statement of Financial Affairs, (Dckt. 1), the statements regarding gross income do not appear credible and require additional proof from the Debtor to confirm their accuracy. Debtor also purportedly disputed a filed claim but has not made any attempt to resolve the issue. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor's plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). The court notes that the Trustee raises concerns regarding the credibility of the Debtor's schedules and whether the Debtor's plan provides for payments that account for all of the Debtor's non-exempt equity and whether the Debtor lists improper expenses.

The court by separate order has dismissed this case. As addressed in the ruling on that Motion, Debtor's financial information provided under penalty of perjury in this case continues to be facially inaccurate.

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

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

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

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

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

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—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on March 20, 2019. 28 days' notice is required. That requirement was met.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss is granted, and the case is dismissed.

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. The debtor, Amy Carino ("Debtor"), Debtor is \$7,055.48 delinquent in plan payments, which represent about 2 months of the \$3,537.75 plan payment. Before the hearing, another plan payment will be due.

DEBTOR'S RESPONSE

Debtor's counsel responds that Debtor will be current by the hearing. Dckt 26.

APRIL 24, 2019 HEARING

At the April 24, 2019 hearing, Debtor's counsel reported that Debtor has made two payments, and is set to receive money for the third payment on Monday. Debtor's sister had cancer and passed away recently. Debtor had advanced money to sister in her final days.

MAY 29, 2019 HEARING

At the May 29, 2019 hearing the Trustee reported that the delinquency is approximately \$6,400. Debtor's counsel reported that a payment was made on May 28, 2019, and intends to be current by June 12, 2019. The Trustee concurred in the Debtor's request for short continuance to allow the Debtor to cure the default as represented to the court. The hearing was continued to July 2, 2019 at 2:00 pm.

DISCUSSION

Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1). Unfortunately for Debtor, a promise to pay is not evidence that resolves the Motion.

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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 Dismiss the Chapter 13 case 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 Motion to Dismiss is granted , and the case is dismissed.

Thru #19

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

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 May 28, 2019. By the court's calculation, 35 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 debtors, Michael and Tracy Maxey ("Debtor"), seek confirmation of the Fifth Amended Plan. Declaration, Dckt. 63. The Plan provides for payment of all secured claims and payments to general unsecured creditors at 4 percent of the claimed total, with payments of a vehicle lease and second mortgage made outside of the Plan. Amended Plan, Dckt. 64. 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 June 7, 2019. Dckt. 72. Trustee opposes confirmation of the proposed plan on grounds that:

- A. Debtor is \$4,238.63 delinquent in plan payments to date, with next scheduled \$4,159.09 payment due June 25, 2019.
- B. Debtor does not appear to provide for all available disposable income over the duration of the Plan, Debtor's Declaration

does not clarify whether Debtor's son contributes to Debtor's monthly income are expected to be provided. The Trustee also notes that Debtor's Schedule J lists car loan expense even though the car payment is not reflected in the Plan and lists additional mortgage expense in the amount of \$370.00.

DEBTOR'S AMENDED DECLARATION

On June 14, 2019, Debtor filed an Amended Declaration in support of Debtor's Fifth Amended Plan. Dckt. 75. Debtor's Amended Declaration states that Debtor's son will not longer be making contributions to supplement Debtor's monthly income. Debtor also states that \$249.29 of Debtor's disposable income is being withheld under the proposed plan. Debtor explains that withholding that amount of disposable income is necessary because Debtor's stipulated monthly income is predicated upon Debtor receiving non-guaranteed monthly bonuses.

DISCUSSION

Trustee's objections are well-taken.

The Chapter 13 Trustee asserts that Debtor is \$4,238.63 delinquent in plan payments, which represents multiple months of the \$4,159.09 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).

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.

Debtor's addressed the Trustee's concerns regarding the contribution of their son's income, the Debtor did not address the inconsistency regarding the car payment. **At the hearing ----**

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

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

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

The Motion to Confirm the Chapter 13 Plan filed by the debtors, Michael and Tracy Maxey (“Debtor”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, and Office of the United States Trustee on May 23, 2019. 28 days' notice is required. That requirement was met.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss is granted, and the case is dismissed.

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that debtors, Michael A. Maxey and Tracy L. Maxey ("Debtor"), are delinquent \$14,713.34 in plan payments to the Trustee to date. With two additional plan payments of \$4,041.00 due prior to the hearing on this matter. Payments were due on April 25, 2019 and May 25, 2019. Debtor has paid \$21,651.66 into the Plan to date.

Additionally, Debtor's Motion to Confirm was denied by the Court at the hearing held on March 5, 2019 (Dckt. 48). Debtors had not filed a new plan and set for confirmation hearing. Trustee requests that Debtor is current under all payments called for by any pending Plan.

DISCUSSION

May 29, 2019 Hearing

At the May 29, 2019 hearing, the court continued the Motion to Dismiss. On May 1, 2019, Debtor filed a Modified Plan and Motion to Confirm. The hearing on this Motion to Dismiss is continued to be conducted in conjunction with the confirmation hearing. The hearing is continued until July 2, 2019 at 2:00 p.m.

The court notes that the Chapter 13 Trustee, in Opposition to the proposed Amended Plan, asserts that Debtor is \$4,238.63 delinquent in plan payments, which represents multiple months of the \$4,159.09 plan payment in his Objection to Debtor's Motion to Confirm. Dckt. 75. Before the hearing, another plan payment will be due.

Delinquency indicates that the Plan is not feasible and is reason to deny confirmation.
See 11 U.S.C. § 1325(a)(6).

At the hearing —

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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 Dismiss the Chapter 13 case 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 Motion to Dismiss is granted, and the case is dismissed.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 4, 2019. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

The Motion to Convert 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 Dismiss the Chapter 13 Bankruptcy Case is granted and the case is dismissed.

This Motion to Convert the Chapter 13 bankruptcy case of Marcus Glenn Cotton (“Debtor”) has been filed by 5AIF Sycamore 2, LLC (“Movant”). Movant asserts that the case should be dismissed or converted based on the following grounds:

A. Debtor is over the unsecured debt limit, disqualifying Debtor from Chapter 13 relief. Pursuant to 11 U.S.C. § 109(e), an individual with regular income who owes, on the date of filing of the petition, “noncontingent, liquidated, unsecured debts” of less than \$394,725.00 may be a debtor under Chapter 13. Here, Debtor owes \$966,693.09 in unsecured debt.

TRUSTEE’S RESPONSE

Trustee filed a Response on June 14, 2019. Dckt. 111. Debtor states that Debtor is delinquent in payment in the amount of \$181,202.96. Debtor has paid a total of \$22,604.46 into the plan with the last payment of \$3,000.00 posted by the Trustee on June 5, 2019. Further, the Court sustained Trustee’s Objection to Debtor’s Motion to Confirm Plan on February 12, 2019 and issued its order on February 20, 2019. To date, Debtor has failed to file an amended Plan and set it for conformation.

APPLICABLE LAW

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: “[f]irst, it must be determined that there is ‘cause’ to act[;] [s]econd, once a determination of ‘cause’ has been made, a choice must be made between conversion and dismissal based on the ‘best interests of the creditors and the estate.’” *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

[O]n request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause

11 U.S.C. § 1307(c). The court engages in a “totality of circumstances” test, weighing facts on a case-by-case basis and determining whether cause exists, and if so, whether conversion or dismissal is proper. *Drummond v. Welsh (In re Welsh)*, 711 F.3d 1120, 1123 (9th Cir. 2013) (citing *Leavitt v. Soto (In re Leavitt)*, 171 F.3d 1219 (9th Cir. 1999)). Bad faith is one of the enumerated “for cause” grounds under 11 U.S.C. § 1307. *Nady v. DeFrantz (In re DeFrantz)*, 454 B.R. 108, 112 n.4 (B.A.P. 9th Cir. 2011) (citing *In re Leavitt*, 171 F.3d at 1224).

DISCUSSION

The court notes that while Movant seeks to convert the case to a proceeding under Chapter 7, 11 U.S.C. § 1307(c) requires the court to address questions of conversion and dismissal with the two-step analysis noted above addressing whether there is cause to act and which action is in the best interest of the estate and creditors.

Here, there is cause to act. Debtor is over the unsecured debt limit, disqualifying Debtor from Chapter 13 relief. Pursuant to 11 U.S.C. § 109(e), an individual with regular income who owes, on the date of filing of the petition, “noncontingent, liquidated, unsecured debts” of less than \$394,725.00 may be a debtor under Chapter 13. Here, Debtor owes \$966,693.09 in unsecured debt.

Debtor is \$181,202.68 delinquent in plan payments, which represents multiple months of the \$4,601.34 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor did not file a Plan or a Motion to Confirm a Plan following the court’s denial of confirmation to Debtor’s prior plan on February 12, 2019. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting a plan for confirmation. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

However, the court does not agree that the best interest of the estate and the creditors is served with a conversion rather than a dismissal. The court is directed to apply a “totality of circumstances” test which is informed by enumerated factors outlined in 11 U.S.C. § 1307(c)(1) through

(11). The is persuaded by the statements made by the Trustee that dismissal is the better course of action here. The Debtor has prejudiced the creditors with unreasonable delay by not timely filing and serving a confirmable plan and being delinquent in plan payments. The Movant has not plead with particularity any specific reason to convert the case other than the Debtor being over the Chapter 13 debt limits.

At the hearing ---

Cause exists to dismiss this case pursuant to 11 U.S.C. § 1307(c). The Motion is granted, and the case is dismissed

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 Convert or Dismiss the Chapter 13 case filed by 5AIF Sycamore 2, LLC (“a creditor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

_____ ~~**IT IS ORDERED** that the Motion to Dismiss is granted, and the case is dismissed.~~

* * * * *

years preceding the date of the filing of the instant case. Case no. 18-22871, Dckt. 31. Therefore, pursuant to 11 U.S.C. § 1328(f)(1), Debtor is not eligible for a discharge in the instant case.

Therefore, the Objection is sustained. Upon successful completion of the instant case (Case No. 19-22649), the case shall be closed without the entry of a discharge, and Debtor shall receive no discharge in the instant case.

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

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

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

IT IS ORDERED that Objection to Discharge is sustained, and upon successful completion of the instant case, Case No. 19-22649, the case shall be closed without the entry of a discharge.

* * * *

Final Ruling: No appearance at the July 2, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 24, 2019. By the court's calculation, 39 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy 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, Moises Crisanto Campos ("Debtor") has filed evidence in support of confirmation. As reflected below, the Chapter 13 Trustee's initial objection to the Modified Plan has been resolved.

CHAPTER 13 TRUSTEE'S RESPONSE

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response on June 17, 2019. Dckt. 74. Trustee notes that Debtor's Schedule I and J, filed as Exhibits A and B on Docket 71 are neither marked amended or supplemental. This has the potential to make it difficult for parties to find the Debtor's most recent budget on file with the court.

DEBTOR'S RESPONSE

Debtor filed a Response to Trustee's Response on June 24, 2019. Dckt 83. Debtor's Counsel responds that Updated Schedules I and J that had been filed as Exhibits to the Motion to Confirm Second Modified Plan have been filed on June 24, 2019 as Supplemental Schedules. Dckts. 77-80.

CHAPTER 13 TRUSTEE'S REPLY:

The Trustee filed a Response stating his non-opposition on June 26, 2019. Dckt. 85.

DISCUSSION

The Trustee's Opposition having been resolved, 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 Moises Crisanto Campos ("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 May 24, 2019, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick ("the Chapter 13 Trustee") for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.
