UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

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

1.	**19-22537-E-13** **SLE-1**	**JERRY JORS** **Steele Lanphier**	**MOTION TO CONFIRM PLAN** **6-11-19 [21]**

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, and Office of the United States Trustee on June 11, 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 ~~granted~~.

The debtor, Jerry Jors ("Debtor"), seeks confirmation of the First Amended Plan. The Amended Plan provides for $1,650.00 paid through May, 2019; monthly payments of $1,650.00 for the remainder of the plan term; and a dividend of 0 percent to unsecured claims. Amended Plan, Dckt. 25. 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 July 2, 2019. Dckt. 37. The Trustee alleges Debtor is $135.00 delinquent in Plan payments, with $3,165.00 paid to date.

DISCUSSION

The Chapter 13 Trustee asserts that Debtor is $135.00 delinquent in plan payments. However, no evidence, such as a Declaration providing testimony of the amount of payments made, was provided in support of the Opposition.

With no evidence filed of what payments Debtor has made, it is unclear whether there is any delinquency.

At the hearing, xxxxxxxxxxxxxx.

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

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

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

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

~~**IT IS ORDERED** that the Motion is granted, and Debtor's Amended Chapter 13 Plan filed on June 11, 2019, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee") for approval as to form, and if so approved, Trustee will submit the proposed order to the court.~~

2.	**19-23714-E-13** **MJD-1**	**STEVEN FONTAINE** **Matthew DeCaminada**	**MOTION TO IMPOSE AUTOMATIC STAY** **6-21-19 [15]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on June 21, 2019. By the court's calculation, 25 days' notice was provided. 14 days' notice is required.

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

The Motion to Impose the Automatic Stay is denied.

The debtor, Steven Fontaine ("Debtor"), seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) imposed in this case. This is Debtor's third bankruptcy petition pending in the past year with the prior two cases having been dismissed. Debtor's prior bankruptcy cases (Nos. 19-22373 and 19-22920) were dismissed on April 29, 2019, and May 20, 2019, respectively. *See* Order, Bankr. E.D. Cal. No. 19-22373, Dckt. 11, April 29, 2019; Order, Bankr. E.D. Cal. No. 19-22920, Dckt. 9, May 20, 2019. Therefore, pursuant to 11 U.S.C. § 362(c)(4)(A)(I), the provisions of the automatic stay did not go into effect upon Debtor filing the instant case.

In both of Debtor's prior cases, the case was dismissed for failure to timely file all necessary documents.

Here, Debtor explains the prior cases were filed *pro se*, that Debtor now has legal counsel, and that all necessary documents have been filed.

CREDITOR'S OPPOSITION

Balboa, LLC holding a secured claim ("Creditor") filed an Opposition on July 2, 2019. Dckt. 22. Creditor argues the present case was not filed in good faith, which Creditor notes the court found at a hearing on a Motion For Relief in the second case.

NOTICE OF DISMISSAL

On July 12, 2019, Debtor filed a pleading titled "Withdrawal of Debtor's Motion to Impose Automatic Stay as to All Creditors." Dckt. 29. The court is unaware of any statute or rule authorizing a party to "withdraw" a motion or request for other relief sought from the court. Federal Rule of Civil Procedure 41(a)(1)(A)(i), as incorporated into contested matter practice by Federal Rule of Bankruptcy Procedure 7041 and 9014, to dismiss a motion so long as no opposition has been filed. Here, an opposition filed, Debtor is not permitted to unilaterally dismiss this Motion.

APPLICABLE LAW

When stay has not gone into effect pursuant to 11 U.S.C. § 362(c)(4), a party in interest may request within 30 days of filing that the stay take effect as to any or all creditors (subject to such conditions or limitations as the court may impose), after notice and a hearing, only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed. 11 U.S.C. § 362(c)(4)(B).

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

> (I) 2 or more previous cases under this title in which the individual was a debtor were pending within the 1-year period;
>
> (II) a previous case under this title in which the individual was a debtor was dismissed within the time period stated in this paragraph after the debtor failed to file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney), failed to provide adequate protection as ordered by the court, or failed to perform the terms of a plan confirmed by the court; or
>
> (III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under this title, or any other reason to conclude that the later case will not be concluded, if a case under chapter 7, with a discharge, and if a case under chapter 11 or 13, with a confirmed plan that will be fully performed; . . .

11 U.S.C. § 362(c)(4)(D).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); *see also* Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am.

Bankr. L.J. 201, 209–10 (2008). An important indicator of good faith is a realistic prospect of success in the second case, contrary to the failure of the first case. *See, e.g.*, *In re Jackola*, No. 11-01278, 2011 Bankr. LEXIS 2443, at *6 (Bankr. D. Haw. June 22, 2011) (citing *In re Elliott-Cook*, 357 B.R. 811, 815–16 (Bankr. N.D. Cal. 2006)). Courts consider many factors—including those used to determine good faith under §§ 1307(c) and 1325(a)—but the two basic issues to determine good faith under § 362(c)(3) are:

A. Why was the previous plan filed?

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

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

DISCUSSION

IN REM RELIEF FROM AUTOMATIC STAY GRANTED IN PRIOR CASE

In Debtor's second case, Creditor filed a Motion seeking relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) and (d)(4). Motion, Bankr. E.D. Cal. No. 19-22920, Dckt. 13. After the June 25, 2019 hearing on that motion, the court, Honorable Christopher D. Jaime presiding, granted the motion and made the following findings:

> On April 17, 2019, **just six days after Movant recorded its Notice of Trustee's Sale, Debtor filed his first Chapter 13 case** (no. 19-22373). See Declaration of Amy Martinez, p. 2, ¶ 3. Debtor did not file any schedules, proposed Chapter 13 Plan, or any other required case commencement documents with the petition. **The petition also listed the Property as Debtor's primary residence, despite the fact that Debtor does not live at the Property and uses it solely as an investment**. Martinez Decl., p. 2, ¶ 4; see also Dkt. 17, Ex. 3 (non-owner occupied property business purposes loan agreement). The first Chapter 13 case was dismissed on April 29, 2019, for failure to timely file necessary documents.
>
> On May 7, 2019, **a little more than one week after the first case was dismissed and two days before Movant's May 9, 2019, trustee's sale of the Property, Debtor filed the instant (second) Chapter 13 case (no. 19-22920). The Debtor filed an inaccurate and misleading petition in that he omitted any disclosure of his prior bankruptcy case from it.** Movant states it was unaware that Debtor had filed another bankruptcy and had not received notice that a petition was filed. Therefore, Movant held its trustee's sale on May 9, 2019. This second case was dismissed on May 20, 2019, again, for failure to timely file necessary documents. Dkt. 9. Movant filed the present motion requesting retroactive relief from the automatic stay to validate its trustee's sale and also requesting relief under § 362(d)(4) on May 23, 2019, and, thus, after the case was dismissed. Dkt. 13. Nevertheless, the court retains jurisdiction to hear and determine the motion. Burcena v. Bank One (In re Cabuloy), 339 Fed.Appx. 814,

815 (9th Cir. 2009) (citing Aheong v. Mellon Mortgage Co. (In re Aheong), 276 B.R. 233, 239-40 & n. 8 (9th BAP 2002)).

Meanwhile, while the second Chapter 13 case was still open, on June 11, 2019, the Debtor filed a third Chapter 13 case (no. 19-23714). Debtor states in his response that he filed a motion to impose the automatic stay in that third Chapter 13 case and that the motion is set for hearing on June 25, 2019. Dkt. 22, 2:23-24. Debtor's statement is not quite accurate. Although the Debtor has filed a motion to impose the stay in his third Chapter 13 case, the Debtor only recently filed that motion on June 21, 2019, and it is set for hearing on July 16, 2019. See Case No. 19-23714, Dkt. 15. Debtor states in his response that the prior two bankruptcy cases were filed pro se. He also states that he did not deliberately fail to notify the Movant of the second bankruptcy prior to the trustee's sale on May 9, 2019, but rather he could not find a facsimile number until after he retained counsel Matthew DeCaminada, who was only able to reach a representative that provided a facsimile number on May 15, 2019. Again, the Debtor's statement is not quite accurate and, in any case, **the court does not believe the Debtor**. On April 24, 2019, in the Debtor's first Chapter 13 case, Movant's counsel Geraci Law Firm filed a request to be notified of electronic filings in the case that included the law firm's facsimile number. See case no. 19-23373, dkt. 10. Although there is no indication the document was formally served on the Debtor, the Debtor nevertheless bears some responsibility for reviewing the docket in a prior case in an effort to ascertain contact information for his secured (and foreclosing) lender identified as a party in interest in his first and second Chapter 13 cases, especially knowing that there is a pending foreclosure sale. See generally, McKaskle v. Wiggins, 465 U.S. 168, 183–184 (1984) (noting that pro se criminal defendants have some obligation to perform duties that would normally be attended to by trained counsel); accord Martinez v. Court of Appeal of Cal., Fourth Appellate Dist., 528 U.S. 152, 162 (2000). The point is, **at least two weeks before the Debtor filed his second Chapter 13 case and Movant foreclosed on the Property, the Debtor had access to a facsimile number and an attorney whom he could have contacted to notify of his second Chapter 13 case and stop Movant's trustee's sale before it occurred. The Debtor made no effort to do that.**

Debtor contends that the motion for relief from automatic stay should be denied because Movant is adequately protected. The only adequate protection identified by the Debtor is potential equity in the Property. Even assuming adequate protection can purge a bad faith filing, equity alone falls far short of any redemption. See In re Victory Const. Co., 37 B.R. 222, 228 (9th Cir. BAP 1984) (noting that bankruptcy court concluded that debtor apparently purged bad faith filing with adequate protection by paying creditor current, providing creditor with a 50% interest rate increase, and by providing creditor with a solvent guarantor).

Debtor asserts that this third bankruptcy case was filed in good faith since the prior two were filed pro se, the Debtor has steady monthly rental income, and he has retained an attorney for this bankruptcy. The

> **court is not persuaded.** First, the court is aware that the Debtor filed his first and second bankruptcy cases pro se. Nevertheless, "pro se litigants are bound by the rules of procedure." Ghazali v. Moran, 46 F.3d 52, 54 (9th Cir. 1995) (citing King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987)). And at least in matters of procedure and compliance with applicable rules, they are not "treated more favorably than parties with attorneys of record." Jacobsen v. Filler, 790 F.2d 1362, 1364 (9th Cir. 1986). Second, as explained below, bad faith permeates all three of the Debtor's cases- even with an attorney. The repeated filing of non-productive Chapter 13 cases filed in very close proximity to foreclosure events is indicative of abuse, filing for an improper purpose, and bad faith and therefore cause for relief from the automatic stay. Phoenix Picadilly, Ltd. v. Life Ins. Co. of Virginia (In re Phoenix Picadilly, Ltd.), 849 F.2d 1393, 1394 (9th Cir. 1988) (automatic stay may be terminated for cause for bad faith filing); see also In re Garza, 2011 WL 10723283, *3 (Bankr. E.D. Cal. 2011). Moreover, **the court notes that all three of the Debtor's bankruptcy cases appear to involve nothing more than a two-party dispute between the Debtor and a single secured creditor in which the Debtor seeks to use the bankruptcy court to avoid state law loan enforcement proceedings.** See Greenberg v. U.S. Trustee (In re Greenberg), 2017 WL 3816042, *4-*5 (9th Cir. BAP 2017) (listing such conduct as indicative of bad faith). The schedules filed in the Debtor's third Chapter 13 case weeks after this second case was dismissed (and therefore indicative of the state of affairs in the second case) also list only one piece of real property that has been foreclosed on, a junior lienholder on the Property, $950.00 in personal property all of which is claimed as exempt, debt to one unsecured creditor in the amount of $109.00, and secured property tax debt of $1,581.17. See Case No. 19-23714, Dkt. 1, pgs. 1-28. And as to the one junior lienholder, it apparently is due no payment from the Debtor. Dkt. 22 at 4:5-6. So not only does this case possess many of the indicia of a bad faith filing, but, there really is nothing for a Chapter 13 trustee to administer. See Phoenix Picadilly, 849 F.2d at 1394-95.

Civil Minutes, Bankr. E.D. Cal. No. 19-22920, Dckt. 38(emphasis added).

11 U.S.C. § 362(c)(4)(D) ANALYSIS

As discussed above, the court made extensive findings as to Debtor's intent in filing his three bankruptcy cases, and noted that essentially Debtor is using the Chapter 13 case to resolve a dispute with Creditor, with the cases being filed for the sole purpose to hinder Creditor's efforts to collect on its claim.

Debtor did not file any reply to Creditor's Opposition, or any supplemental response disputing the court's findings in the prior case (which were made after this Motion was filed).

Debtor's Notice of "Withdrawal" indicates that Debtor will not be pursuing this Motion.

Debtor has not rebutted the presumption of bad faith. Therefore, 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 Impose the Automatic Stay filed by Steven Fontaine ("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 no stay shall go into effect.

3. 16-26649-E-13 SJT-1 — LA RON/KIAUNA NORMAN — Peter Macaluso — MOTION TO MODIFY PLAN — 5-28-19 [34]

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

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 29, 2019. By the court's calculation, 49 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, La Ron Norman and Kiauna Norman ("Debtor"), seek confirmation of the First Modified Plan. The Amended Plan provides for $112,981.00 to have been paid by May 24, 2019, and for payments of $5,006.00 thereafter . Amended Plan, Dckt. 36. 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 July 1, 2019. Dckt. 42. The Trustee opposed confirmation of the Amended Plan on the following grounds:

A. §1.02 of the proposed Plan did not indicate nonstandard provisions were attached. Therefore, by the plan's terms the additional provisions are to be given no effect.

B. Debtor's are current under the Amended Plan unless a payment is due May 25, 2019.

C. Debtor's Motion does not cite legal authority as required under Local Bankruptcy Rule 9014-1(d) and Federal Rule of Bankruptcy Procedure 9013.

DEBTOR'S RESPONSE

On July 3, 2019, Debtor filed a Reply to Trustee's Objection. Dckt. 45.

Debtor's Counsel proposes the following language be added to the order confirming the plan to address the Trustee's grounds for opposition:

> As of June 25, 2019 the Debtors shall have paid in to their plan $117,016. Debtors plan payment shall be $971 for May 25, 2019. The Debtors plan payment shall be $5,006 beginning July 25, 2019 and for the remainder of the plan

Debtor's Counsel further adds that the proposed plan be modified pursuant to 11 U.S.C. §1329, and promised to include applicable codes in future motions.

DISCUSSION

Trustee opposes confirmation on the basis that the plan terms are contradictory–the modified plan relying on additional terms where the unchecked box indicates there are no effective additional terms, Debtor proposing to pay less by May 2019 than has already been paid, and Debtor not clarifying what, if any, monthly payment should be made in May 2019.

However, Debtor has filed a Reply suggesting language proposed for a confirmation order that would address each of those grounds for opposition.

Trustee also opposes confirmation on the grounds Debtor did not cite to any legal authority in the Motion and therefore failed to comply with Federal Rule of Bankruptcy Procedure 9013.

While Trustee's argument is well-taken, Debtor's Motion here provides most of the necessary factual and legal grounds for confirmation and substantially complies with the requirements of the Bankruptcy Code. Furthermore, Debtor's counsel has clarified the legal basis for relief in the Debtor's Response.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by the debtors, La Ron and Kiauna Norman ("Debtor"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and Debtor's Amended Chapter 13 Plan filed on May 28, 2019, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, Trustee will submit the proposed order to the court.

4. **19-21920-E-13 DJC-2** | **SUZANNE FLEMONS** **Diana Cavanaugh** | **MOTION TO CONFIRM PLAN** **6-4-19 [35]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on June 4, 2019. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the 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, Suzanne Flemons ("Debtor") seeks confirmation of the First Amended Plan. Dckt. 37. The Plan provides for a single $200.00 payment in the first month of the plan, payments of $4,125.00 for the remaining 59 months, and a 100 percent dividend to unsecured claims totaling $2,791.00. Dckt. 38. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S RESPONSE

The Chapter 13 Trustee, David Cusick ("Trustee") filed a response on July 2, 2019. Dckt. 43. Trustee argues that the plan impermissibly modifies the secured claim of Class 1 creditor Loan Care unless payments on that claim begin in May 2019.

DEBTOR'S RESPONSE

Debtor filed a response on July 5, 2019. Dckt. 45. Debtor's counsel alleges that the Trustee has agreed to addressing Trustee's grounds for opposition in the language of the order confirming the plan.

DISCUSSION

At the hearing, xxxxxxxxxxxxxx.

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

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

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

~~The Motion to Confirm the Chapter 13 Plan filed by Suzanne Flemons ("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 Chapter 13 Plan filed on June 4, 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.~~

5. **19-20923-E-13 MRL-2** **CHRISTINA GHASSEMI** **Mikalah Liviakis** **MOTION TO SELL** **6-19-19 [22]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on June 19, 2019. By the court's calculation, 27 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice).

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

The Motion to Sell Property is granted.

The Bankruptcy Code permits Christina Ghassemi, the Chapter 13 Debtor ("Movant"), to sell property of the estate or under the confirmed plan after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here, Movant proposes to sell the real property commonly known as 6129 Pinecreek Way Citrus Heights, California ("Property").

The proposed purchasers of the Property are Dennis Yeremenko and Marina Yeremenko, and the terms of the sale are:

A. The sale price is $270,000.00.

B. Buyer will make a $2,500.00 deposit and buyer will pay the remainder of the purchase price within 30 days after this motion is granted. Close of escrow shall occur 15 days after acceptance.

C. Real Estate Agent Commission of $13,500.00 will be paid through escrow proceeds of the sale.

D. Bank of America will be paid approximately $29,218.19 from the sale for the first mortgage.

E. SMUD will be paid approximately $5,259.28 from the sale for the secured utility lien.

Debtor estimates $218,191.70 in net proceeds from the sale.

DISCUSSION

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because the sale will allow Debtor to pay 100 percent of claims in this case.

Broker's Commission

Movant has estimated that a 5 percent broker's commission from the sale of the Property will equal approximately $13,500.00. The court issued an Order authorizing the employment of Steven Barnes of Lyon Real Estate as Debtor's broker on June 21, 2019. Dckt. 31. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker an amount not more than 5 percent commission.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 6004(h) stays an order granting a motion to sell for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court because the buyer has presented the highest and best offer for purchase of the Property and the escrow period is set to run around June 1, 2019.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 6004(h), and this part of the requested relief 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 Sell Property filed by Christina Ghassemi, Chapter 13 Debtor, ("Movant") having been presented to the court, and upon review of the

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

IT IS ORDERED that Christina Ghassemi, Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Dennis Yeremenko and Marina Yeremenko or nominee ("Buyer"), the Property commonly known as 6129 Pinecreek Way Citrus Heights, California ("Property"), on the following terms:

A. The Property shall be sold to Buyer for $270,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 25, and as further provided in this Order.

B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.

C. Chapter 13 Debtor is authorized to execute any and all documents reasonably necessary to effectuate the sale.

D. Chapter 13 Debtor is authorized to pay a real estate broker's commission in an amount not more than 5 percent of the actual purchase price upon consummation of the sale to Steven Barnes of Lyon Real Estate, which may be divided between seller's and buyer's real estate brokers as provided in the Purchase Agreement.

E. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Chapter 13 Debtor. Within fourteen days of the close of escrow, the Chapter 13 Debtor shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow.

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

6. **19-20125-E-13** **ROBERT/DONNA DECELLE** **MOTION TO CONFIRM PLAN**
PGM-4 **Peter Macaluso** **6-8-19 [86]**

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 June 8, 2019. By the court's calculation, 38 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 debtors, Robert A. DeCelle and Donna M. DeCelle ("Debtor") seek confirmation of the First Amended Plan. The First Amended Plan provides for $6,540.00 to be paid through April 2019, payments of $2,380.00 for the remaining 57 months of the plan term, and a 0 percent dividend to unsecured claims totaling $66,069.60. Dckt. 88. 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 July 2, 2019. Dckt. 96. Trustee opposes confirmation on the basis that Debtor will have to pay $4,760.00 prior to the hearing date.

DEBTOR'S REPLY

Debtor filed a Reply on July 9, 2019. Dckt. 99. Debtor's counsel alleges that a payment of $2,380.00 was made on July 8, 2019, and that all payments will be made by the date of this hearing.

No declaration or other evidence was filed in support of Debtor's Reply.

DISCUSSION

At the time Trustee filed his Opposition Debtor was current, but with two payments becoming due before the date of this hearing. No evidence has been presented by either party showing whether Debtor is current.

At the hearing, xxxxxxxxxxxxxx.

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

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

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

~~The Motion to Confirm the Chapter 13 Plan filed by Robert A. DeCelle and Donna M. DeCelle ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

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

7. **19-20026-E-13 LBG-1** **THOMAS IVERS** **Lucas Garcia** **CONTINUED MOTION TO CONFIRM PLAN** **3-26-19 [40]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on March 26, 2019. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied.

Thomas James Ivers ("Debtor") seeks confirmation of the Amended Plan, which would be the first confirmed plan in this case. The Amended Plan provides for payments of $100.00 for 60 months, and a lump sum of $608,000.00 in month 11. Dckt. 42. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on April 23, 2019. Dckt. 53. Trustee argues the Amended Plan is even more speculative than the prior proposed plan which was denied. Trustee opposes the following provision of the Chapter 13 Plan:

> Payments to class 3 shall be as follows: If by September 30, 2019 no purchase agreement has been signed and sale can be completed in a reasonable time thereafter, the court, the trustee, and the debtor through counsel shall propose 3 names for a specially appointed representative of the estate.

> That specially appointed representative shall evaluate the properties [sic] saleability in light of the debtors willingness to waive any amount of the homestead necessary to complete a 100% payment to secured claims through the trustee. That representative shall have until November 30, 2019 to market the property. If no purchase agreement is achieved by November 30, 2019 all class two claims shall revert to class 3 surrender and the creditors may take action against the property directly.

Dckt. 42. Trustee argues the plan would require him to appoint a representative for the Estate, and that Debtor would be better off converting the case to one under Chapter 7.

PROVIDENT FUNDING'S OBJECTION

Creditor, Provident Funding Associates, L.P. ("Provident") holding a secured claim filed an Objection on March 29, 2019, which this court has recast as an opposition to the Motion. Dckt. 49. Provident opposes confirmation of the Amended Plan on the basis that it relies on a sale of Debtor's residence to pay Provident's claim.

Also in Provident's Objection, almost as if an afterthought, Provident requests that it be allowed attorneys' fees. The Objection does not allege any contractual or statutory grounds for such fees. No dollar amount is requested for such fees. No evidence is provided of Provident having incurred any attorneys' fees or having any obligation to pay attorneys' fees. Based on the pleadings, the court would either: (1) have to award attorneys' fees based on grounds made out of whole cloth, or (2) research all of the documents and California statutes and draft for Movant grounds for attorneys' fees, and then make up a number for the amount of such fees out of whole cloth. The court is not inclined to do either.

CITIBANK'S OBJECTION

Creditor, Citibank, N.A ("Citibank") holding a secured claim filed an Objection, which the court has recast as an opposition, on April 23, 2019. Dckt. 56. Citibank opposes confirmation of the Plan on the basis that:

A. The plan does not provide for equal period payments as required by 11 U.S.C. § 1322(b)(2).

B. The plan does not provide for the full value of Citibank's claim.

C. The plan does not promptly cure arrearages as required by 11 U.S.C. § 1322(b)(5).

D. The plan is not feasible.

E. The plan fails to provide for ongoing monthly payments.

F. Citibank is incorrectly listed as a Class 2(a) in the plan.

REVIEW OF PLAN

On schedule D Debtor states under penalty of perjury that Debtor's residence (the Pershing Avenue Property) secures the following obligations: (1) ($166,916) owed to Citibank, (2) ($30,000) owed to Jamie Ivers, and (3) ($212,349) to Provident Funding. Dckt. 1 at 20-21. Debtor states the property is worth $608,000. *Id.* These amounts are consistent with the proofs of claims filed by Citibank and Provident Funding.

On Schedule I Debtor states that he is unemployed, with his income limited to receiving $1,442 in Social Security benefits. *Id.* at 25-26.

On Schedule J Debtor computes having only $133 a month in net income available from his $1,442 gross monthly income that could be used to fund a Plan. Under penalty of perjury Debtor states that he has only $1,308.50 a month in expenses. *Id.* at 28. However, Debtor's statement under penalty of perjury of his reasonable and necessary expenses appears not to be "reasonable."

On Schedule J Debtor provides $260 a month for real property taxes and $60 a month for homeowners/property insurance for this residence stated to be worth $608,000. He goes further to state that this residence with a value of $608,000 requires no home maintenance or repairs during the five years of the Plan. *Id.* at 28.

For housekeeping supplies and food Debtor provides only $300 a month for sixty months. If one allocates $75 a month for housekeeping supplies and expenses, that leave $225 a month for food. In a 30 day month, that provides $2.50 for food for each meal during the sixty months. *Id.*

Debtor continues, stating under penalty of perjury that he will have no expenses for any clothing, laundry, or dry cleaning during the sixty months of the Plan. *Id.*

The expenses continue, stating that Debtor will spend no money on any recreation or entertainment during the sixty months of the Plan. *Id.*

The Amended Plan purports to state that there is to be a $608,000 lump sum payment in month eleven of the Plan. This bears no relation to the claims as scheduled or listed on the Plan.

It then provides that in the eleventh month after the sale, which is to be done by the eleventh month of the case, Class 2 creditors are to be paid. No explanation is given for why the Debtor will hold the sales proceeds for a year before creditors are paid.

The plan provides for Class 3 claims, for which there are none, if no purchase agreement has been signed (not that a sale has been completed), then the trustee and debtor will propose three names for a representative of the estate. Then somehow a representative of the estate will be appointed and the representative will have a month to market the property, but no provision is made for the representative to sell the property.

Then, if no sale is completed by the end of the month, then the Debtor and estate shall forfeit the property, allowing what Debtor asserts are grossly oversecured creditors, to foreclose on the Property. Plan Additional Provisions, Dckt. 42 at 8.

Why a Debtor, who would be otherwise be competent to perform a plan, would agree to such a short marketing schedule and then forfeit the property is unimaginable. Rather than showing a Debtor who can perform a plan, it demonstrates that Debtor is either grossly unable to perform a plan or Debtor has a scheme afoot to further delay payment.

MAY 7, 2019 HEARING

At the May 7, 2019 hearing, the court continued the hearing to allow the parties to seek appointment of a special representative to be authorized to have all rights and responsibilities for the sale of the Property. Dckt. 61. The court continued the hearing to June 11, 2019 at 3:00 p.m.

STATUS CONFERENCE STATEMENT

Debtor filed a Status Conference Statement on June 4, 2019. Dckt. 73. Debtor states that there is a conference with Creditor's representatives to discuss the selection of a representative on June 6, 2019.

JUNE 11, 2019 HEARING

At the June 11, 2019 hearing the court continued the hearing in light of the conference to allow the parties time to discuss selection of a representative.

DISCUSSION

No supplemental pleadings or status reports have been filed since the prior hearing.

At the July 2, 2019 hearing on the Provident Funding Associates, L.P. Motion for Relief From the Stay, the court was advised that an agreement had been reached to allow the Debtor until the end of October 2019 to get the property sold. Civil Minutes, Dckt. 79 at 2. It was represented to the court that the Debtor is employing a real estate broker and the property is being immediately listed for sale.

A review of the file in this case discloses that no *ex parte* motion to employ a real estate broker has been filed. No motion for appointment of the special purpose representative has been filed.

In reviewing the Civil Minutes from the May 7, 2019 hearing on this Motion, the court notes the following:

> **Continuance of Hearing**
>
> At the hearing **Debtor's embraced the assertion** that the Chapter 13 **Plan needed to provide a credible marking and sales process** by which the Property can be **sold for fair value within a commercially reasonable time**. The objecting creditors did not express the rejection of a plan to provide for such sale, but opposed the plan as written believing that it would not lead to such a sale.
>
> The idea was developed at the hearing for the **appointment of a special**

purpose represnative4 [sic] of the Debtor to be authorized **to have all rights and responsibilities for the sale of the Property**. The representative would work directly with the real estate broker, make all of the "owner" decisions, and be the person authorized to seek approval of the sale of the Property and to consummate such sale approved by the court.

The court continues the hearing in light of the clearly apparent common interests of the Parties (**Debtor having very limited funds, an inability to cure the defaults and make the current monthly payments, and an apparent exemption equity in the property**; and creditors having a financial incentive for avoiding a foreclosure sale, curing/paying off the senior secured obligation, the care and insurance of the Property, and expenses of sale.

Civil Minutes, Dckt. 61 at 5 (emphasis added).

In the seventy (70) days since the May hearing, the Debtor has failed to take any action to have a special representative appointed. Though on several occasions counsel for the Debtor has dropped the name Kristy Hernandez, a known bankruptcy attorney who has appeared many times in this court and reported by Debtor's counsel to be a real estate agent, no effort has been made to have Ms. Hernandez appointed as a special purpose representative or real estate professional.

If the Debtor's statements under penalty of perjury are accurate, then the estate has an interest of at least $180,705 in equity in this property:

Schedule A/B FMV	$608,000
Costs of Sale (Est. 8%)	($ 48,000)
Citibank Secured Claim	($166,916)
Jamie Ivers Secured Claim	($ 30,000)
Provident Funding	($212,349)
	==========
Value of Estate's Equity	$180,705

On Schedule C Debtor claims a homestead exemption of $175,000. Dckt. 1 at 17. This effectively exhausts any equity with respect to creditors in this case.

Thus, the apparent sombulance of Debtor and Debtor's Counsel is putting at risk the Debtor's $175,000 homestead exemption equity, as opposed to losing value for the estate for which fiduciaries of the estate would have liability.

Debtor has demonstrated that he is not pursuing a plan in this case, at least not the current plan or some amended version of this plan.

The Trustee and creditors' arguments are well-taken. In denying confirmation of the prior proposed plan, the court stated the following:

Currently, there is nothing holding Debtor to this proposed plan. Debtor is

> providing no adequate protection to secured claims while a proposed sale is presumably in the works. If Debtor, in six months, decides to amended or modify his plan to provide for other treatment, Debtor would be free to do so (after having reaped the benefit of making no payments of any kind to creditors for several months).
>
> Currently, the plan is overly speculative and does not appear feasible. 11 U.S.C. §1325(a)(6). Creditors are not provided adequate protection on their claims, and the plan proposes to provide for secured claim in unequal payments despite the requirements of the Bankruptcy Code. 11 U.S.C. § 1325(a)(5)(B)(iii).

Civil Minutes, Dckt. 31.

The present Amended Plan is not an improvement. What Debtor likely intended was to provide a penalty in the Amended Plan to show "yes, I am serious about selling my residence." In September 2019, a representative will be appointed to determine whether the Debtor's residence is fit for sale, and the representative is given 2 months to market the property before it is surrendered to creditors under the plan. Dckt. 42.

Such provisions do not confer confidence in Debtor's actions. If Debtor is serious about selling the property, it is unclear why a representative would need to determine if the property is saleable (particularly where Debtor anticipates net proceeds of $608,000.00 to fund the plan). It is further unclear why Debtor is given from January 2019 through September 2019 to market the property, but an actual professional would be limited to three months (in which time he or she must first be appointed, and then must determine whether the property is fit for sale).

The most likely result of the proposed Amended Plan appears to be that the property is surrendered to creditors. If that is the case, and as Trustee points out, this case is better suited for Chapter 7.

The proposed Plan does not comply with the provisions of 11 U.S.C. § 1325 and 1322, and plan is not confirmed.

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 Confirm the Amended Chapter 13 Plan filed by Thomas James Ivers ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Confirm the Amended Plan is denied.

8. **18-27634-E-13** **LESLIE CREED** **MOTION TO MODIFY PLAN**
RWH-3 **Roanld Holland** **5-23-19 [32]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on May 23, 2019. By the court's calculation, 54 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 debtor, Leslie Creed ("Debtor"), seeks confirmation of the Modified Plan to cure a delinquency caused by a job assignment to a foreign country and Debtor's husband's injury. Declaration, Dckt. 34. The Modified Plan provides for $13,524.75 paid through May 2019, and payments of $6,135.00 for the remaining 55 months of the plan term. Modified Plan, Dckt. 30. 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 July 1, 2019. Dckt. 38. The Trustee opposes confirmation on the following grounds:

A. Debtor is $2,335.00 delinquent under the proposed terms of the Plan. However, Trustee notes a $2,400 payment, dated June 28, 2019, is currently processing which will bring Debtor current if it posts.

B. Debtor's proposed Plan lists $1,500.00 attorney's fees paid prior to filing, with $2,500.00 to be paid through the Plan. The prior plan, however, states $3,000.00 of attorney's fees were paid pre-filing, with $1,000 to be paid through the plan. To date, Trustee has disbursed $1,000.00 in attorney's fees.

C. Debtor's proposed Plan seeks to add $2,203.77 in post-petition arrears where 2,213.67 is due.

D. Debtor has not filed supplemental Schedules I and J in support of the proposed increased plan payment. Debtor's previously filed Schedules I and J reflect an ability to pay only $5,993.55.

DISCUSSION

Trustee's ground for opposition all cast doubt on the feasibility of the Modified Plan. Debtor has made a $2,4000.00 payment, but if that payment does not post, Debtor will be delinquent in plan payments. Debtor's Modified Plan states $3,000.00 in attorney's fees have been paid, where (based on the prior plan and amounts paid by Trustee), that amount should likely be $2,500.00. Debtor's plan fails to provide for the correct amount of post-petition arrearages owing. Finally, Debtor's Schedules I and J indicate a disposable income of only $5,993.55 where that plan payment going forward is $6,135.00.

Without addressing the aforementioned, the Modified Plan is not feasible. 11 U.S.C. § 1325(a)(6).

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 debtor, Leslie Creed ("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 the plan is not confirmed.

9. **18-27634-E-13** **LESLIE CREED** **CONTINUED MOTION TO DISMISS CASE**
DPC-1 **Ronald Holland** **4-25-19 [26]**

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, Debtor's Attorney, and Office of the United States Trustee on April 25, 2019. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss 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 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 Dismiss is XXXXXXXXXXXX.

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Leslie Creed ("Debtor"), is $10,519.25 delinquent in plan payments.

MAY 29, 2019 HEARING

At the May 29, 2019 hearing the court continued this Motion to be heard alongside Debtor's Motion To Confirm Modified Plan. Dckt. 37.

DISCUSSION

Debtor has filed and set for confirmation a modified plan which would bring Debtor current in plan payments. However, a review of the docket shows that the court has denied confirmation of that plan.

At the hearing, xxxxxxxxxxxxxx.

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

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

10. **18-20148-E-13** **SHANEE WILLIAMS** **MOTION TO MODIFY PLAN**
PGM-2 **Peter Macalsuso** **6-7-19 [35]**

APPEARANCE OF COUNSEL FOR DEBTOR REQUIRED

COUNSEL SHALL BRING THE SIGNED ORIGINAL FIRST MODIFIED PLAN TO 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 the Debtor, Chapter 13 Trustee, parties requesting special notice, creditors, and Office of the United States Trustee on June 7, 2019. By the court's calculation, 39 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

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

The debtor, Shanee Williams ("Debtor"), seeks confirmation of the Modified Plan because two separate loans were listed as a single claim in the original plan, and to cure delinquency in plan payments. Declaration, Dckt. 38.

The Modified Plan proposes monthly payments of $160.00, and reclassified the U.S. Department of Housing and Urban Development's claim to Class 4 and the City of Sacramento's claim as unsecured. Modified Plan, Dckt. 36. 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 July 7, 2019. Dckt. 37. Trustee's Opposition argues the Modified Plan is not signed and that Trustee has disbursed

$1,258.08 to the U.S. Department of Housing and Urban Development's claim which is no longer authorized.

DEBTOR'S REPLY

Debtor filed a Reply on July 9, 2019. Dckt. 44. Debtor's counsel argues electronic signatures were mistakenly not added to the uploaded Modified Plan. Debtor further requests the $1,258.08 paid to the U.S. Department of Housing and Urban Development's claim be authorized in the language of the order confirming the plan.

Debtor's counsel filed as Exhibit A a copy of the Modified Plan signed by counsel and Debtor. Dckt. 45.

DISCUSSION

Debtor proposes authorizing the unauthorized payments in the language of the confirmation order.

However, no signed plan has been filed. All pleadings and non-evidentiary documents are required to be signed by counsel by Local Bankruptcy Rule 9004-1(c).

Debtor's counsel filed as Exhibit A a copy of the Modified Plan signed by counsel and Debtor. Dckt. 45. However, this document not been filed, but has merely been thrown at the court.

Debtor did not authenticate the exhibit to establish it is what it is purported to be.

At the hearing, xxxxxxxxxxxxxx.

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

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

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

~~The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Shanee 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 the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on June 11, 2019 is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Trustee will submit the proposed order to the~~

11. 18-23365-E-13 TENA ROBINSON MOTION TO MODIFY PLAN
JB-5 Jason Berg 5-23-19 [132]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 23, 2019. By the court's calculation, 54 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 debtor, Tena H. Robinson ("Debtor") seeks confirmation of the Modified Plan. Dckt. 134. The Modified Plan increases the plan term from 36 to 48 months, and provides for monthly payments of $0.00 for 3 months and $2,450.00 for 45 months. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

Debtor filed Supplemental Schedules I and J on June 14, 2019. Dckt. 138. Debtor states her monthly projected disposable income is $2.525.56.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on July 1, 2019. Dckt. 143. Trustee opposes confirmation on the basis that Debtor is delinquent $2,500.00 in plan payments, and the Motion does not cite a legal basis for the relief requested.

DISCUSSION

The Chapter 13 Trustee asserts that Debtor is $2,450.00 delinquent in plan payments, which represents one month of the $2,450.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

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

The Motion here states the following with particularity (FED. R. BANKR. P. 9013):

1. Debtor requests the Modified Plan be confirmed.

2. The First Modified Plan proposes that the debtor pays $0 for the three months of the plan and $2,450.00 per month for 45 months to the Trustee. The debtor has sufficient disposable monthly income to pay the required payments as demonstrated on her Schedule I and J.

3. All secured claims are provided for in the Modified Plan.

4. The Modified Plan is proposed in good faith.

5. Debtor requests the Modified Plan be confirmed.

Motion, Dckt. 132.

The court is not told what basis there is to confirm the Modified Plan, not all the requirements of 11 U.S.C. § 1325 are addressed, and nowhere does the Debtor explain why a Modified Plan is necessary.

It is not the court's responsibility to sift through the pleadings and make the argument that confirmation here meets the requirements of the Bankruptcy Code.

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 Confirm the Modified Chapter 13 Plan filed by Tena H. Robinson ("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.

12.	**19-22078-E-13 MAS-2**	**EDUARDO/MARIE ORTEGA Peter Macaluso**	**CONTINUED MOTION TO DISMISS CASE 5-9-19 [23]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on May 9, 2019. By the court's calculation, 33 days' notice was provided. 14 days' notice is required.

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

The Motion to Dismiss is granted, and the bankruptcy case is dismissed with prejudice as to each of the two Debtors.

The request for injunction (Fed. R. Bankr. P. 7001) barring the filing of a future bankruptcy case in this Motion is denied without prejudice.

Creditor, Robert Guerra ("Creditor"), filed this Motion seeking dismissal of this case filed by debtors, Eduardo M Ortega and Marie E Ortega ("Debtor"), pursuant to 11 U.S.C. §1307.

The Motion states the following with particularity (Fed. R. Bankr. P. 9013) :

1. Debtor is incapable of keeping their promises, whether paying creditors or complying with the terms of their own Chapter 13 plans. This case was filed in bad faith.

2. Debtor has filed the following prior cases:

Filing Date	**Case No.**	**Result**
10/10/2012	12-38100	Discharge entered June 25, 2013
07/22/14	14-27476	Dismissed September 25, 2015
03/02/16	16-21304	Dismissed January 23, 2017
04/03/17	17-22226	Dismissed January 16, 2019

3. The Debtors have been in and out of Chapter 13 for the last 6 years. Where a plan has been confirmed, the cases were dismissed for defaults in payments.

4. Debtor currently owes Creditor slightly less than $8,000 under the 1999 non-discharge and forbearance agreement.

5. Debtor defaulted on the balloon payment on April 1, 2019 under the recent forbearance agreement.

6. This is the fifth filing by Debtor in the past five or six years. Debtor is a high wage earner but has failed to complete a Chapter 13 file in recent years.

7. Debtor lists $100,000.00 in arrearages in this case, indicating their financial situation has gotten worse since prior filings.

8. The instant case was filed not listing Creditor's secured claim, and appears to have been filed for the sole purpose of thwarting Creditor's enforcement of judgment.

9. Debtor's serial filings and inaccurate schedules demonstrate bad faith and warrant dismissal with prejudice to refiling for at least one year.

Motion, Dckt. 23.

JUNE 11, 2019 HEARING

At the June 11, 2019 hearing Debtor's counsel asserted a defect in service - the Motion not

having been served by personal service or U.S. Mail. counsel not having consented to service by email, the specter of a deficiency in service exists.

Additionally, Debtor's counsel stated that Debtor believed that Creditor had been paid in full through the prior four Chapter 13 cases. The balance of Creditor's claim (not including any additional attorney's fees) has been reduced to less than $8,000.

The court continued the hearing and ordered an opposition be filed by June 24, 2019, and Reply by July 9, 2019. Order, Dckt. 46.

DEBTOR'S OPPOSITION

Debtor's counsel filed an Opposition on June 24, 2019. Dckt. 51. Debtor's counsel argues the current case was not filed in bad faith and should not be dismissed. Debtor's counsel argues further:

1. Debtors have paid the Creditor a total of $134,528.00 at the demise of the mortgage payments.

2. There has been no misrepresentation; while Debtor was unable to complete payments due, the balance was $795.84 according to the Trustee's accounting and down from a initial balance of $122,952.47.

3. The Debtor's first case lasted 14 months, the second case lasted 10 months, and the third case 9 months.

4. Debtor filed this case to pay the creditors and Creditor has been front loaded with the intention to complete that debt first.

5. Debtor appears to have paid Creditor's claim given the lack of a new proof of claim accounting for payments via the Trustee to a remaining balance of $795.84, and is a little bewildered that the claim is asserted to be in excess of $7,000.00.

While a throng of factual allegation are made in the Opposition, no evidence such as a declaration of Debtor was filed. Despite the allegations of bad faith in this case and in the face of the court's comments at the prior hearing, there is no testimony of the Debtor's explaining how this case can be filed in good faith.

At a very basic level, every law student is taught that the court relies on properly authenticated, admissible evidence to establish facts in any proceeding–the court cannot and does not merely take counsel at their word. Furthermore, the Local Rules affirmatively require that evidence be filed along with every motion and request for relief (including a request that this Motion be denied). LOCAL BANKR. R. 9014-1(d)(3)(D). Failure to comply with the Local Rules is grounds for an appropriate sanction. LOCAL BANKR. R. 1001-1(g).

CREDITOR'S REPLY TO DEBTOR'S OPPOSITION

Creditor filed a Response on July 1, 2019. Dckt. 58. Creditor argues that Debtor's Opposition only explains some payments on Creditor's claim have been made, and does not actually refute the allegations of bad faith stated in the Motion. Creditor further notes that no admissible evidence was filed in support of the Opposition.

Creditor filed the Declaration of Mark Serlin, Creditor's counsel, in support of its Opposition. Dckt. 59. Therein, Serlin explains Creditor's claim has continued to grow due to attorney's fees and costs necessarily incurred through collection.

DISCUSSION

Creditor's arguments are well-taken. At the prior hearing, the court noted Debtor's intentions and affirmative conduct in these series of bankruptcy cases has not been to propose, confirm, and perform a Chapter 13 Plan in good faith. Despite those observations, Debtor has chosen not file any evidence to support its Opposition. No testimony of Debtor was provided explaining how this case was filed in good faith. Debtor has elected to mutely sit on the sidelines rather than actively support Debtor's contentions with evidence.

This case is Debtor's fifth since 2012. While Debtor's Chapter 7 was concluded with entry of a discharge in 2013, the subsequent three Chapter 13 cases have been dismissed for defaults in plan payments.

Debtor's filing, failing to perform, and dismissal of the three prior Chapter 13 cases did not occur because Debtor was not represented by knowledgeable, experienced counsel. In the two immediately prior cases Debtor was represented by the same counsel as in this case, and in the third prior case by another bankruptcy attorney. If Debtor was filing and attempting to prosecute the Chapter 13 cases in good faith they were represented by more than sufficient legal horsepower.

A review of the record in the prior Chapter 13 cases indicate monetary defaults in plan payments that were included in the grounds for the dismissal of those cases:

A. Case 17-22226, dismissed January 16, 2019.....$30,389.42 default

B. Case 16-21304, dismissed January 22, 2017.....$15,625.00 default

The file indicates that Debtor failed to make an additional five months of payments of $5,650.00 while the court continued the hearing to allow the Debtor in good faith to cure the default and prosecute a plan in that case before dismissing the case. This indicates that there is $43,875.00 in net monthly income that was not paid into the Plan in Case 16-21304.

C. Case 14-27476, dismissed September 24, 2015.....$23,948.00 default

Just for the periods during the Chapter 13 cases in which the Debtor defaulted and did not

modify the plans, there is at least $70,467.00 of monthly net income that has disappeared. This does not take into account all of the additional income for the months Debtor was not in the non-productive, multiple plan default prior Chapter 13 cases.

On Schedule A/B Debtor states under penalty of perjury that there is only nominal money in bank accounts, $400, and there are no other assets in which what is more than $120,000 of annual take-home income, after taxes and withholding, has been transferred or converted. Dckt. 1 at 13-72

Even after the Debtor's stated reasonable monthly expenses for the two debtors and their two adult children they list as dependents, Debtor has $7,900 a month in monthly net income. Annually this would be $94,800 of "extra" money rolling around - which is unaccounted for.

Notwithstanding this significant income, Debtor has "struggled" to make payments under four Chapter 13 cases filed in the last few years.

Debtor's significant income and failure to prosecute a successful Chapter 13 suggest that Debtor is merely filing cases to delay payment, hinder creditors' ability to collect on their claims. At best, this is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Notably, Debtor has not filed an opposition to this Motion brought on 28 days' notice.

DISMISSAL WITH PREJUDICE

The Motion requests that this, the fourth recent bankruptcy case filed by Debtor, be dismissed with prejudice. Generally, a dismissal is without "prejudice" unless otherwise ordered by the court "for cause." 11 U.S.C. § 349(a). The "prejudice" is that normally the dismissal of a bankruptcy case does not result in the Debtor not being able to obtain a discharge of the debts in the dismissed case in a subsequent case. *Id.*

The Seventh Circuit Court of Appeals addressed the concept of dismissal with prejudice in In re Hall, 304 F.3d 743, 746 (7th Cir. 2002), stating:

> Normally, a dismissal of a bankruptcy petition has no long-term consequences for the debtor's ability to re-file. *Umbenhauer v. Woog*, 969 F.2d 25, 30 (3d Cir. 1992). There is an exception, however, if the court "for cause" orders that the dismissal of the case is with prejudice. See 11 U.S.C. § 349(a). In that instance, the order may either bar the later dischargeability of debts that would have been dischargeable in the dismissed proceeding, or it may preclude the debtor from filing a subsequent petition related to those debts. *Id.* **Dismissals with prejudice are therefore generally reserved for extreme situations, such as when a debtor conceals information from the court, violates injunctions, files unauthorized petitions, or acts in bad faith**. *Id.*; *In re Tomlin*, 105 F.3d 933, 937 (4th Cir. 1997) (filing six bankruptcy petitions in seven years); *In re Martin-Trigona*, 35 B.R. 596, 601 (Bankr. S.D.N.Y. 1983).

The Ninth Circuit Court of Appeals addressed dismissal with prejudice in *Leavitt v. Soto* (*In re Leavitt*), 171 F.3d 1219, 1223-1224 (9th Cir. 1999), stating:

> Generally, dismissals are ordered without prejudice to carry out the remedial purpose of the Bankruptcy Code and to restore property rights, insofar as is practicable, to the same positions as when the case was first filed, but without affecting the disposition of debts. *In re Tomlin*, 105 F.3d 933, 936-37 (4th Cir. 1997); *In re Lawson*, 156 B.R. 43, 45 (9th Cir. BAP 1993). **The phrase "unless the court, for cause, orders otherwise" in Section 349(a) authorizes the bankruptcy court to dismiss the case with prejudice.** *See also In re Tomlin*, 105 F.3d at 937; 3 Collier on Bankruptcy § 369.01, at 349-2-3 (15th ed. 1997). A dismissal with prejudice bars further bankruptcy proceedings between the parties and is a complete adjudication of the issues. *Tomlin*, 105 F.3d at 936-37.
>
> "Cause" for dismissal under § 349 has not been specifically defined by the Bankruptcy Code. For Chapter 13 cases, §§ 1307(c)(1) through (10) provide that the bankruptcy court may convert or dismiss, depending on the best interests of the creditors and the estate, for any of ten enumerated circumstances. Although not specifically listed, bad faith is a "cause" for dismissal under § 1307(c). *Eisen*, 14 F.3d at 470 ("A Chapter 13 petition filed in bad faith may be dismissed 'for cause' pursuant to 11 U.S.C. § 1307(c)."); *In re Hopkins*, 201 B.R. at 995 (holding that the debtors' filing of frivolous tax returns with no intention to pay taxes warranted dismissal of a Chapter 13 petition for bad faith). Therefore, it follows that **a finding of bad faith based on egregious behavior can justify dismissal with prejudice**. *Tomlin*, 105 F.3d at 937; *In re Morimoto*, 171 B.R. at 86; *In re Huerta*, 137 B.R. 356, 374 (Bankr. C.D.Cal. 1992). We hold that bad faith is "cause" for a dismissal of a Chapter 13 case with prejudice under § 349(a) and § 1307(c).

In *Leavitt v. Soto* (*In re Leavitt*), 171 F.3d at 1224-1225 (*See also, In re Khan*, 846 F.3d 1058, 1065 (9th Cir. 2017)), the Ninth Circuit stated that this analysis is a consideration of bad faith in the dismissal of a Chapter 13 case with prejudice as follows:

> Bad faith, as cause for the dismissal of a Chapter 13 petition with prejudice, involves the application of the "totality of the circumstances" test. *Eisen*, 14 F.3d at 470. The bankruptcy court should consider the following factors:
>
> > (1) whether the debtor "misrepresented facts in his [petition or] plan, unfairly manipulated the Bankruptcy Code, or otherwise [filed] his Chapter 13 [petition or] plan in an inequitable manner," id. (citing *In re Goeb*, 675 F.2d 1386, 1391 (9th Cir. 1982));
> >
> > (2) "the debtor's history of filings and dismissals," id. (citing *In re Nash*, 765 F.2d 1410, 1415 (9th Cir. 1985));
> >
> > (3) whether "the debtor only intended to defeat state court litigation," id. (citing *In re Chinichian*, 784 F.2d 1440, 1445-46 (9th Cir. 1986)); and

(4) whether egregious behavior is present, *Tomlin*, 105 F.3d at 937; *In re Bradley*, 38 B.R. 425, 432 (Bankr. C.D. Cal. 1984).

A finding of bad faith does not require fraudulent intent by the debtor.

> Neither malice nor actual fraud is required to find a lack of good faith. The bankruptcy judge is not required to have evidence of debtor illwill directed at creditors, or that debtor was affirmatively attempting to violate the law - malfeasance is not a prerequisite to bad faith.

In re Powers, 135 B.R. 980, 994 (Bankr. C.D. Cal. 1991) (relying on *In re Waldron*, 785 F.2d 936, 941 (8th Cir. 1986)).

The evidence presented in support of the Motion, the files in this and the prior bankruptcy cases filed and not prosecuted by Debtor, clearly support a finding that Debtor, and each of them, have not filed or attempted to prosecute this bankruptcy case in good faith.

It is significant that these two debtors have elected to not provide any counter testimony in this Contested Matter. They have chosen not to educate the court as to facts and events which counter the structure of bad faith that has been assembled by Movant from the current and prior bankruptcy cases.

Debtor, and each of them, have used this case as one in a series of bankruptcy case filings in a bad faith scheme to hinder and delay creditors, and effectively defraud them out of the monthly net income that Debtor had committed to pay under the various plans, in the various Chapter 13 cases, which Debtor filed and then failed to perform.

Debtor, and each of them, have actively worked with knowledgeable bankruptcy counsel to manipulate, improperly use, and abuse the Bankruptcy Code to divert monies from the bankruptcy estate and plan, not pay creditors, and "live in bankruptcy protection" to the prejudice of creditors (as well as the bankruptcy estates from which property of the estates, the monthly net income, was diverted by Debtor).

Debtor, and each of them, have misrepresented the plans that they purport to present in good faith and "promise" to perform. As discussed above, Debtor has "used" the Bankruptcy Code to divert more than $100,000 in monthly net income instead of funding their Chapter 13 plans as "promised."

In the prior bankruptcy cases, though the court continued hearings on Motions to Dismiss filed by the Chapter 13 Trustee, the Debtor failed to fulfill the promises Debtor made to prosecute those cases, which in addition to the substantial defaults in plan payments, include the following.

A. Case 17-22226

> Though promising diligently to prosecute a loan modification and being granted a one hundred and one (101) day continuance, Debtor failed to seek approval of a loan modification or demonstrate that Debtor was in good faith pursuing the represented loan modification. 17- 22226; Civil Minutes, Dckts. 90, 91.

B. Case 16-21304

Though promising to diligently file evidence of how Debtor could generate an extra $10,000+ to cure the defaults in the case and having been given an eighty four (84) day continuance to diligently prosecute the case and present he promised evidence, Debtor failed to so do. 16-21304; Civil Minutes, Dckts. 80, 92, 95.

Over five years Debtor has filed five bankruptcy cases, with four dismissed for failure to prosecute, failure to make plan payments, and failure to present evidence to support what they have promised to do. Debtor has grossly defaulted in plan payments, though by Debtor's own admissions/evidence Debtor has substantial monthly net income to easily make the required payments.

Debtor has used these series of bankruptcy cases as part of Debtor's scheme to delay creditors, prevent foreclosures, not pay debts, and divert significant monies, amounts in excess of $100,000 from creditors and the bankruptcy estates or plan estates (if there was a confirmed plan) in the prior bankruptcy cases.

Debtor, and each of them, intentionally and willfully, with the assistance of multiple experienced bankruptcy counsel, have abused and misused the bankruptcy laws to improperly hinder and delay creditors.

Debtor's intentions and affirmative conduct in these series of bankruptcy cases has not been to propose, confirm, and perform a Chapter 13 Plan in good faith.

Though the Motion clearly seeks dismissal with prejudice; with the Motion being filed using the notice procedure specified under Local Bankruptcy Rule 9014-1(f)(1) for which written opposition is required; Debtor, and each of them, have chosen to merely have their attorney file an opposition argument, but Debtor, and each of them, have stayed away from providing any evidence or testimony in opposition.

The court has carefully considered the Motion, supporting and opposing pleadings, this case and the history of Debtor's repeated failed filing of bankruptcy cases. The requested relief of dismissal with prejudice is proper under these facts and the law.

Based on the foregoing, cause exists to dismiss this bankruptcy case with prejudice. The Motion is granted, and the case is dismissed with prejudice. [FN. 1.]

FN. 1. As stated by the Ninth Circuit Court of appeals in *Colonial Auto Ctr. v. Tomlin* (*In re Tomlin*), 105 F.3d 933, 937 (9th Cir. 1977), the effect of a dismissal with prejudice is stated to be as follows:

> Indeed, although the Bankruptcy Code establishes a general rule that dismissal of a case is without prejudice, it also expressly grants a bankruptcy court the authority to "bar the discharge, in a later case . . . of debts that were dischargeable in the case dismissed . . . ." 11 U.S.C. § 349(a) (1994); 3 Collier on Bankruptcy § 349.02[2] (15th ed. rev. 1994).

Request for Injunction

Creditor also requests in the Motion that the court bar Debtor from filing a bankruptcy case for at least a year. In substance, this is a request for an injunctive relief.

Federal Rule of Bankruptcy Procedure 7001 provides that a proceeding to obtain an injunction or other equitable relief is an adversary proceeding. Creditor has not provided authority for the court to grant such relief pursuant to this Contested Matter.

The Bankruptcy Code does in some instances allow injunctive relief without bringing an adversary proceeding. For example, 11 U.S.C. § 362(d)(4) allows relief preventing automatic stay from going into effect as to certain property in any future case. However, Creditor has not sought such relief.

Therefore, the request for injunctive relief barring Debtor from filing a bankruptcy case for at least year 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 Dismiss the Chapter 13 case filed by Creditor, Robert Guerra ("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 with prejudice, by which Debtor Eduardo Mendez Ortega, Jr. and Debtor Marie Esquivel Ortega, and each of them, are barred from obtaining a discharge of any and all debts that would have been dischargeable in the current bankruptcy case, No. 19-22078.
>
> **IT IS FURTHER ORDERED** that the request for injunctive relief barring Debtor from filing a bankruptcy case for at least year is denied.

13. **19-23292-E-13 PLC-3** **THOMAS PEARSON** **Peter Cianchetta** **MOTION TO VALUE COLLATERAL OF PNC BANK, N.A.** **6-12-19 [34]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on June 12, 2019. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of PNC Bank N.A. ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $54,375.00.

IDENTIFICATION OF REAL PARTY IN INTEREST

The debtor, Thomas Michael Pearson ("Debtor"), filed this Motion to value the secured claim of PNC Bank, N.A. ("Servicer"). Notice was provided on that party on June 12, 2019. Dckt. 39.

On July 19, 2019, Deutsche Bank Trust Company Americas, as Trustee for Residential Accredit Loans, Inc., Mortgage Asset-Backed Pass-Through Certificates, Series 2007-QS6 ("Creditor") filed an Opposition identifying itself as the creditor holding the note.

Along with the Opposition, Creditor filed the Declaration of Barb Essman, an employee of Servicer. Dckt. 48. Essman provides testimony that Creditor is the holder of the note, and Servicer is only the mortgage servicer. *Id.*, ¶ 1.

While the real party in interest was not named in the Motion or served, Creditor has filed an opposition (likely having received notice from Servicer) and effectively joined into the Contested Matter. No prejudice appearing to any party in interest, the court will consider the merits of the Motion

despite the aforementioned defects.

REVIEW OF MOTION

The Motion to Value filed by the Debtor to value the secured claim of Creditor is accompanied by Debtor's declaration. Declaration, Dckt. 37. Debtor is the owner of the subject real property commonly known as 4376 Mellinger Road, Canfield, Ohio ("Property"). Debtor seeks to value the Property at a fair market value of $42,500.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Debtor also filed the Declaration of Morris M. Levy, a licensed real estate appraiser, presenting expert testimony that the Property is valued at $42,500.00 as of April 3, 2019. Declaration, Dckt. 36. Mr. Levy's appraisal report is attached as Exhibit 2. Dckt. 38.

TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on July 1, 2019. Dckt. 43. Trustee argues the correct creditor may not have been served, and notes that the Levy Declaration has been filed previously (and has been refiled now with the caption blocked out).

CREDITOR'S OPPOSITION

As discussed above, Creditor filed its Opposition on July 2, 2019. Dckt. 46. Creditor asserts the value of the Property is $63,000.00 as of June 19, 2019, based on the testimony and appraisal report of licensed real estate appraiser, Tim Lowry. Declaration ¶¶ 4, 7, Dckt. 49; Exhibit F, Dckt. 47.

Creditor argues its appraisal is more accurate because its cited comparables are closer in proximity than those relied on in the Debtor's appraisal (.31 miles, 3.31 miles, .23 miles compared with .98 miles, 3.31 miles, 3.31 miles). Additionally, Creditor argues its appraisal relies on comparable sales made closer to the petition date (October 2018, October 2018, February 2019 compared with November 2018, December 2017, October 2018).

Creditor argues that the Motion should be denied because Debtor has undervalued the Property.

DISCUSSION

The first deed of trust secures a claim with a balance of approximately $109,000.00. Schedule D, Dckt. 1. Under either Debtor or Creditor's asserted valuation, Creditor's claim is partially under-collateralized.

Debtor's Appraiser, Thomas Pearson, provides his declaration authenticating his appraisal report. Dckt. 37. Reviewing the Debtor's Appraisal Report (Exhibit 2, Dckt. 38), the property is described as a two story residence with an effective age of 60 years. It is 2,326 square fee, with 3 bedrooms and 1.5 bathrooms. The home is heated, but there is not a cooling system.

The three comparable properties used by the appraiser are within a three mile radius of the Property. The sales prices for the three comparables are $80,000 (700 square fee smaller), $79,000 (550 square feet larger), and $72,000 (350 square fee larger). Debtor's appraiser believes that all three comparables are superior in condition and makes a ($20,000) downward adjustment and a ($10,000) downward adjustment each for functional utility. This ($30,000) adjustment are the most significant made in coming to the opinion of $42,500.

The Property is stated to be 146' x 289' (42,194 square fee). Each of the three comparables is 112'x361' (40,432 square feet), 112 x 175' (19,600 square feet), and 80' x 391' (31,280 square feet). No adjustment is made for the larger square footage for the Property over any of the comparables.

Creditor's Appraiser, Tim Lowry, provides his declaration authenticating his appraisal report. Dckt. 49. Reviewing the Creditor's Appraisal Report (Exhibit F, Dckt. 47), the property is described as a two story residence with an effective age of 40 years. The general description is the same as Debtor's Appraiser's.

Creditor's Appraiser has provided eight comparable properties, ranging from .23 to 2.33 miles from the Property. The sales prices for the comparables range from $72,000 to $186,000 with four of the comparables being $149,000 or higher in sales price. For the higher priced comparables condition downward adjustments of ($75,000) to ($100,000) are made.

Of the eight comparables identified by Creditor's Appraiser, only three are actual sales, with the others being listings.

Upon review of the two appraisal reports, consideration of the specific information provided therein and the expert testimony on the adjustments, the court determines that fair market value of the Property to be $54,375.00.

Creditor's secured claim is determined to be in the amount of $54,375, the value of the collateral, and therefore payments in the secured amount of the claim shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Value Collateral and Secured Claim filed by Thomas Michael Pearson ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Deutsche Bank Trust Company Americas, as Trustee for Residential Accredit Loans, Inc., Mortgage Asset-Backed Pass-Through

Certificates, Series 2007-QS6 ("Creditor") secured by a First in priority deed of trust recorded against the real property commonly known as 4376 Mellinger Road, Canfield, Ohio, is determined to be a secured claim in the amount of $54,375.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $54,375.00 and is encumbered by a senior lien securing a claim in the amount of $109,000.00, which exceeds the value of the Property that is subject to Creditor's lien.

14. 17-20494-E-13 MET-1 THOMAS/COZETTE CRAVENS Mary Ellen Terranella MOTION TO MODIFY PLAN 5-24-19 [84]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 23, 2019. By the court's calculation, 54 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 XXXXXX.

The debtors, Thomas Nicklas Cravens and Cozette Dee Cravens ("Debtor") seek confirmation of the Modified Plan because Debtor, aged 72 in July 2019, no longer anticipates finding new employment. Declaration, Dckt. 88. The Modified Plan reduces the Plan term to 36 months, and provides for a monthly plan payment of $1,657.00 for 27 months and $110.00 for 9 months. Dckt. 86.

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 July 1, 2019. Dckt. 93. Trustee opposes confirmation on the following grounds:

1. With 9 months of $110.00 payments remaining in the 36 plan term, none of the $3,225.00 in attorney's fees have been paid. Therefore, the plan would by its terms be forced to continue beyond 36 months.

2. The Plan indicates attorney's fees are to be sought by court approval. To date, no motion for attorney fees has been filed.

3. Debtor filed supplemental schedules as exhibits only.

DISCUSSION

Trustee argues the Modified Plan will complete in more than thirty-six months. With 9 months of $110.00 payments remaining in the 36 plan term, none of the $3,225.00 in attorney's fees have been paid. Dckt. 94. Therefore, the plan would by its terms be forced to continue beyond 36 months. Section 2.03 of the plan states:

> **Duration of payments.** The monthly plan payments will continue for 36 months unless all allowed unsecured claims are paid in full within a shorter period of time. **If necessary to complete the plan, monthly payments may continue for an additional 6 months, but in no event shall monthly payments continue for more than 60 months.**

Modified Plan, Dckt. 86(emphasis added).

While Trustee argues the Modified Plan would take more than 36 months to complete, the plan terms seem to contemplate and allow over extension to some extent.

Trustee has requested "that the matter [of overextension] be considered," but has not presented argument explaining why the plan cannot be confirmed, including to what extent the plan permits over extension and how many months the plan term would need to be completed.

At the hearing, xxxxxxxxxxxxxx.

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 Thomas Nicklas Cravens and Cozette Dee Cravens ("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 XXXXXXXXX.

15. 19-20302-E-13 RJ-2 | **HSIN-SHAWN SHENG** | **Richard Jare** | **MOTION TO CONFIRM PLAN** | **5-23-19 [78]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on May 23, 2019. By the court's calculation, 54 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Plan is denied.

The debtor, Hsin-Shawn Cyndi Sheng ("Debtor") seeks confirmation of the Amended Plan. The Plan provides for 6 monthly payments of $1,000.00, $3,500.00 for the next 54 months. Dckt. 80. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CREDITOR CITIBANK'S OPPOSITION

Citibank, N.A. holding a secured claim ("Citibank") filed an Opposition on June 14, 2019. Dckt. 93. Citibank opposes confirmation on the following grounds:

1. To cure the pre-petition arrearages of $673,126.03 within 60 months, Citibank must receive a minimum payment of $11,218.77 per month from the Debtor through the Plan. Debtor's Plan provides for payments to the Trustee in the amount of $1,000.00 per month for 6 months, then $3,500.00 per month for 54 months. Debtor does not have sufficient funds available to cure the arrears over the term of the Plan within 60 months.

2. Any possible loan modification is speculative, and therefore the plan is not feasible.

3. Debtor has an active Chapter 7 case.

4. 11 U.S.C. § 1326(a)(1) requires Debtor commence payments within 30 days of filing the petition.

CREDITOR WELLS FARGO BANK'S OPPOSITION

Wells Fargo Bank, N.A. holding a secured claim ("WellsFargo") holding a secured claim filed an Opposition on June 28, 2019. Dckt. 99. WellsFargo opposes confirmaiton on the following grounds:

1. To cure the pre-petition arrearages of $1,166.74 within 60 months, WellsFargo must receive a minimum payment of $19.45 per month from the Debtor through the Plan. Although Debtor does not provide for payments to Secured Creditor, Debtor's Plan provides for payments to the Trustee in the amount of $1,000.00 per month for 6 months, then $3,500.00 per month for 54 months. It appears Debtor has sufficient funds to provide for the full arrearages of WellsFargo and thus the Plan should be amended accordingly.

2. Debtor has an active Chapter 7 case.

3. 11 U.S.C. § 1326(a)(1) requires Debtor commence payments within 30 days of filing the petition.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee") filed an Opposition on July 2, 2019. Dckt. 102. Trustee opposes confirmation on the following grounds:

1. The Trustee's pending Motion to Dismiss should be granted because the present plan is not confirmable and no new plan has been filed.

2. The additional provisions include tiered payments which violate 11 U.S.C. § 1325(a)(5)(B)(iii)(l).

DISCUSSION

Debtor did not file any reply to the oppositions of Citibank, WellsFargo, or the Trustee.

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

As this court has previously held and numerous creditors have successfully navigated, a debtor may provide adequate protection payments while a creditor is held at bay from foreclosing on property (usually the debtor's home). Congress expressly provides for the court to specify the necessary adequate protection to be afforded a creditor. 11 U.S.C. § 361.

This can be done as part of a confirmed plan. The creditor's debt is not modified by the confirmation, but with the provisions as set forth in the Additional Provisions, the debtor is locked in to diligently prosecuting a loan modification and making substantial adequate protection payments (generally which are in the amount of the anticipated, good faith computed, amount of the modified loan). The creditor's rights are protected, with some specific loan modification request performance grounds in addition to all the other rights to seek relief from the stay, as well as the substantial adequate protection payment (even if there is an equity cushion in the collateral).

This was done instead of the practice for keeping bankruptcy cases open for more than a year without a confirmed plan, without adequate protection payments, because there was a "modification request in process" and such modification could not be forced through a confirmation. This also did not follow the practices of some judges in denying confirmation and dismissing cases because the debtor could not make the then current mortgage payment and arrearage cure, even if the debtor could seek a loan modification in good faith. There was a perception that some loan services and some loan creditors use requirements of such judges to dodge loan modification requests.

Here, the proposed adequate protection payment is $565.00 for the first 6 months, then $2,700.00 thereafter until the loan modification is approved or denied.

In the Amended Plan, Debtor notes this adequate protection payment is made "despite the monthly contract installment payments which is $6,336.55."

On Schedule A/B Debtor lists the property securing this creditor's claim to be $940,000.00. Citibank's claim is ($1,272,304.32), with an arrearage of ($673,126.03). Proof of Claim No. 2-1.

If this creditor were to reamortize the ($1,272,304.32) obligation (pre-petition arrearage and all) over 30 years, and charged a 4.5% interest rate, the monthly principal and interest payment would be $6,447.00 (computed using the Microsoft Excel Loan Calculator program). The escrow for property taxes and insurance will be on top of this amount.

It appears that Debtor and Debtor's Counsel have been a bit too aggressive in stating an

adequate protection amount, listing an amount significantly lower than what would be conceived to be a modified loan amount. The court uses this simple calculation in evaluating a debtor's good faith in not providing for a secured claim in a plan, but making good faith adequate protection payments.

Here, Debtor is not providing a good faith adequate protection payment, but with the amount proposed significantly less than what a reasonably projected modified loan monthly payment of principal and interest would be (before the property tax and insurance monthly escrow amount).

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

16. 18-27801-E-13 ROBERT SCOTT CONTINUED MOTION TO SELL
PGM-2 5-27-19 [62]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, 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)(2) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion to Sell Property 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 Sell Property is XXXXXXX.

The Bankruptcy Code permits Robert C. Scott, Debtor, ("Movant") to sell property of the estate or under the confirmed plan after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here, Movant proposes to sell the real property commonly known as 5293 Francesca Street, Elk Grove, California ("Property").

The Motion states the following with particularity (FED. R. BANKR. P. 9013) as to the sale terms:

A. The sale offer is $365,000.

B. The estimated net proceeds are $116, 392.26, of which half shall go to Debtor's ex-husband pursuant to their divorce agreement.

The essential terms not stated within the Motion are as follows (described fully in the Purchase Agreement (Exhibit A, Dckt. 65))

A. Proposed purchaser of the Property is Margery Young.

B. The Seller is Barbara Ozobiani.

C. Initial Deposit of $2,500.00.

D. 5 percent broker's commission.

TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on June 6, 2019. Dckt. 70. Trustee opposes the Motion on the following grounds:

1. Debtor has not received court authorization to employ the real estate brokers Thomas Harold and Thomas-Chambers Company.

2. Debtor's claims bar date as to government claims is June 17, 2019.

3. The arrearages of creditor Patelco Credit Union must be paid through escrow.

4. Debtor's Motion does not include a prayer for relief.

5. Debtor will need to file a change of address soon.

DEBTOR'S REPLY

Debtor filed a Reply on June 25, 2019. Dckt. 72. Debtor states a motion to employ will be filed before the hearing in this Matter, and requests a continuance to allow the court to hear that Motion.

JULY 2, 2019 HEARING

At the July 2, 2019 hearing the court noted the Motion has several deficiencies. Civil Minutes, Dckt. 78. Most important, not all the terms are stated with particularity (FED. R. BANKR. P. 9013) in the Motion. The court is not told who the buyer is, it is not explained why the seller is not Debtor, no commission for any broker is requested, and Debtor does not argue the sale here achieves the fair market value of the Property.

Additionally, as Trustee notes, the broker has not been authorized to be hired.

The purported Purchase Agreement is between Barbara Ozobiani, not the Debtor and Margery Young, the Purchaser.

The Motion clearly states that Robert Scott, the Debtor, and his attorney, request that the court authorize **them** (the Debtor and Attorney) to sell **their** (Debtor and Attorney) property. Motion, p. 1:17.5-18.5; Dckt. 62.

This "Barbara Ozobiani" who is the actual seller is not identified in the Motion.

In his Declaration the Debtor, Robert Scott, states under penalty of perjury that he has received an "offer to purchase my property." Declaration, ¶ 2.; Dckt. 64.

But Mr. Scott then testifies that title to the property has been put "in the name of Robert Scott, **as Trustee** of the Barbara A. Ozobiani 2017 Revocable Living Trust." *Id.*, ¶ 4. It appears that the Debtor has a fiduciary duty as a trustee of a trust concerning this Property.

The Declaration states that Debtor's "divorce settlement" is attached as an Exhibit. *Id.* ¶ 8. There is no exhibit (improperly) attached to the Declaration, and nothing is included with the Exhibits document filed in support of the Motion. Dckt. 65.

The court cannot identify (and Debtor has not provided) any legal authority for this court to authorize the Debtor to sell real property pursuant to a contract in which Barbara Ozobiani personally is selling real property to Margery Young.

The court notes that the real estate professionals working on this sale and who are responsible for drafting the Purchase and Sale Agreement have drafted it to have Barbara Ozobiani to sign the contract, with a typed signature, next to the name of Ms. Ozobiani, of Robert Scott, Trustee. It appears to be that Robert Scott is the trustee of Barbara Ozobiani, not a trust. Exhibit A, Dckt. 6 at pp. 2, 6, 16

With respect to the Debtor, Robert Scott, being the trustee of a trust, included as Exhibit C is what is identified as a probate court order stating:

> The property is to be re-titled in the name of Robert Scott, as Trustee of the Barbara A. Ozobiani 2017 Revocable Living Trust.

Dckt. 65 at 19.

On Schedule A/B Debtor states under penalty of perjury that he personally, and only he, owns the Property that is the subject of the present Motion. Dckt. 16 at p. 3.

Under penalty of perjury the Debtor does not list any interest in a trust.

On Schedule C Debtor states the right to claim a homestead exemption in the Property, which he has stated under penalty of perjury he, and only he, personally owns. *Id.* at p. 9.

On Schedule E/F Debtor, under penalty of perjury, does not list any obligation he owes under any divorce agreement to any person. *Id.* at p. 12.

On the Statement of Financial Affairs Debtor states under penalty of perjury that he is single and that in the eight years preceding the bankruptcy case he has not lived with a spouse in any community property state. *Id.*, Statement of Financial Affairs Question1, 3.

On his Bankruptcy Petition Debtor states under penalty of perjury that he currently lives in the Property that is the subject of the Motion. Dckt. 1 at p. 2. In response to Question 2 he states under penalty of perjury that he has lived at that address for the three years preceding this case and nowhere else. Dckt. 16 at 21.

On the Statement of Financial Affairs, Part 4, in response to Question 9 Debtor states under penalty fo perjury that he has not been part of any legal proceeding, including any dissolution proceeding, during the one year prior to the commencement of the bankruptcy case. *Id.* at p. 23.

Continuance of Motion

On the request of Debtor's counsel, the court continued the hearing on the Motion to allow supplemental briefing.

SUPPLEMENTAL PLEADINGS

Since the prior hearing the Debtor filed his personal Declaration and the Last Will and Testament of Barbara Ozobiani identified as Exhibit A. Dckts. 81, 82.

Debtor's Declaration presents testimony to authenticate Exhibit A. Dckt. 81 at ¶ 2. Debtor's Declaration further testifies that according to article 5 of Exhibit A, Debtor is the 100 percent beneficiary of the Property and therefore is legally allowed to sell the Property. *Id.,* ¶ 3.

Article 2 at PDF page 2 of Exhibit A purports to gift the entire estate of Barbara A. Ozobiani to the Barbara A. Ozobiani 2017 Revocable Trust ("Ozobiani Trust").

Article 5.2 of the Ozobiani Trust (PDF page 17 of Exhibit A) purports to direct the Trustee of the Ozobiani Trust to distribute the Property to Debtor. Article 7.1 of the Ozobiani Trust identifies Debtor as the first nominated Trustee. *Id.* at PDF p. 21.

DISCUSSION

While the Debtor has presented evidence attempting to show he is the 100 percent owner of the Property, some issues remain.

Exhibit C (Dckt. 65) is an Order from the Superior Court for the County of Sacramento finding that the Property is an asset of the Ozobiani Trust and is to be retitled in the name of Debtor as Trustee for the Ozobiani Trust.

Despite this court order, Debtor is purporting to sell the Property as Trustee of the Ozobiani Trust. This would appear to directly contravene the terms of the Ozobiani Trust and the court order that title to the Property be transferred to Debtor.

Debtor provides the court with a copy of the Last Will and Testament that provides the real property, upon Barbara Ozobiani's death, was transferred into the Barbara A. Ozobiani 2017 Revocable Trust. This is consistent with the order of the Superior Court stating that the Debtor is the successor trustee of that Trust.

In his Declaration, Debtor provides the court with his legal analysis of the Will and provides the court with his legal conclusion:

> 3. Article Five of this document shows that I am the 100% beneficiary of the real property located at 5293 Francesca Street, Elk Grove, CA 95758.

> Therefore, I am legally allowed to sell the subject property and keep excess funds from the sale.

Supplemental Declaration ¶ 3, Dckt. 81.

Debtor does not provide his legal analysis of, if the property was transferred to the trust and no longer remained as an asset of Barbara Ozobiani, how it would then be administered as part of Ms. Ozobiani's will.

Article Five of the Last Will and Testament provides as follows:

> ARTICLE FIVE
>
> FUNERAL AND BURIAL INSTRUCTIONS
>
> 5.1. It is my wish that my remains be cremated. I would like there to be a memorial service. I authorize Robert C. Scott, Jr. to carry out all of these directions and wishes, particularly those for disposition of my remains.

Last Will and Testament, Article; Exhibit A, Dckt. 82 at 2.

It is unclear how the funeral and burial instructions in the Will direct how the trustee of the Barbara A. Ozobiani 2017 Revocable Trust must administer the properties in that trust in the exercise of his powers and fulfilling his fiduciary duties.

Attached after Exhibit A is an unmarked document which is titled "Living Trust of Barbara A. Ozobiani Dated January 12, 2017 to be Known as the Barbara A. Ozobiani 2017 Revocable Trust. Dckt. 82 at 11-35. Article Five of the Trust document provides for distributing the real and personal property in the Trust to the Debtor. The court has not been presented with any evidence that the trustee of the Trust has fulfilled his duties and transferred the property to Debtor.

The Purchase and Sale Agreement has not been amended and it is still between Barbara Ozobiani, a woman who died prior to the May 22, 2019 Addendum to the Agreement. A review of the LEXISNEXIS public records research data base indicates that Ms. Ozobiani's date of death was February 22, 2018 - almost a year before the bankruptcy case was filed and more than a year before "she entered into" the Purchase and Sale Agreement to sell the Property. The LEXISNEXIS real property records research data base reports that Barbara Ozobiani is the owner of the Property as a matter of the county records.

At the hearing, xxxxxxxxxxxxxx.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Sell Property filed by Robert C. Scott, Debtor in

Possession, ("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 Motion for an order authorizing the sale of real property by non-debtor Barbara A. Ozobiani is **XXXXXXXX**.

17. 19-22653-E-13 CLH-6 REECE/RODINA VENTURA

CONTINUED MOTION TO CONVERT CASE FROM CHAPTER 13 TO CHAPTER 11 AND/OR MOTION TO APPOINT TRUSTEE
6-20-19 [92]

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 court issued an Order shortening time and setting the hearing for June 25, 2019, so long as notice is provided via facsimile no later than June 20, 2019. Order, Dckt. 98. Movant's Proof of Service indicates Debtor's counsel, the Chapter 13 Trustee, and the office of the U.S. Trustee via facsimile on June 20, 2019. Dckt. 100.

The Motion to Convert 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 Convert the Chapter 13 Bankruptcy Case to a Case under Chapter 11 and/or appoint a trustee is granted.

This Motion to Convert the Chapter 13 bankruptcy case of the debtors, Reece Ventura and Rodina Cordero Ventura ("Debtor"), has been filed by creditors Benjamin Villanueva and Adela Bon Gaunia ("Movant").

Movant asserts that the case should be dismissed or converted based on the following grounds:

A. Debtor is over the debt limit. At a May 21, 2019, Status Conference the court noted this fact and gave Debtor until June 15, 2019, to dismiss or convert the case before the court issued its order to show cause why the case should not be dismissed. Debtor's only action thus far is a Motion

To Reconsider set for hearing July 2, 2019.

B. Debtor is wasting assets of the Estate by closing its two care home businesses. On Debtor's Schedules Debtor has not accurately stated income received from or the value of the businesses. Debtor is not seeking to transfer the businesses to family members.

C. Appointment of a trustee is necessary to prevent destruction of listed and unlisted assets, and misuse of funds of the Estate.

D. Debtors have also intentionally failed to list assets of the Estate, including inheritance from Rodina Ventura's mother Rebecca Alda Cordero.

The Motion is supported by the Declarations of Cyndi Hill, Movant's counsel, and Regina May Cordero Burnley, Debtor's step-sister. Dckts. 95, 96. The Hill Declaration presents evidence that Debtors is closing Debtor's care home businesses.

The Cordero Burnley Declaration introduces evidence that Debtor Rodina Ventura has avoided bring the will of her mother to probate to keep those assets, valued at as much as $500,000.00 out of her bankruptcy case. Dckt. 96.

JUNE 25, 2019 HEARING

At the June 25, 2019 hearing the court Movant does not provide in the Motion or elsewhere any authority or legal basis for converting the case to Chapter 11 and appointing a trustee. Civil Minutes, Dckt. 105. The legal argument has been left entirely to the court.

The court continued the hearing to allow supplemental briefing.

DEBTOR'S OPPOSITION

On July 10, 2019 Debtor filed an Opposition. Debtor's counsel argues the following:

> Here, Schedule E/F is a total of $65,920.43/$406,860.50. When the Court looks behind the face of the petition, as it has here, the disputed, contingent, and unliquidated claim of Gaunia in the amount of $149,718.00 should be deducted, for a total of $323,062.93, which is statutorily under the debt limited noted by the Court of $419,275.00.

Opposition, Dckt. 119 at 2:7-12.

Debtor's counsel argues Gaunia's claim is contingent and should be reduced because "amounts litigated are seldom that which plaintiffs seek." Debtor's counsel also argues that while Debtor has listed various employees as having claims against them, that they do not believe there are any valid claims. *Id.* at p. 4:19-21.

DISCUSSION

Review of Chapter 13 Eligibility at Hearing on Motion to Extend Automatic Stay

During a prior hearing, the court made the following findings:

> Here, Debtor on Schedule E lists the California Franchise Tax Board having $2,171.90 and the Internal Revenue Service having $44,016.66 in priority unsecured claims, for a total of $46,188.56 in priority unsecured claims. On Schedule F Debtor lists $406,515.46 in general unsecured claims. Dckt. 1 at 24-52. On Schedule D Debtor lists Exeter Financial Corporation having an unsecured claim of $12,032.64 (the amount that this creditor's claim exceeds the value its collateral). *Id.* at 21.
>
> In this 28 pages of unsecured claims, Debtor has listed many at just $1.00, as noted by the court in setting a Status Conference in this Chapter 13 case. Dckt. 30. It appears that such "$1.00" creditors may well likely have significantly higher claims. The Debtor has listed the Gaunia unsecured claim as being "Contingent," "Unliquidated," and "Disputed.**" Given the proceedings in this case, it does not appear that these amounts are contingent or unliquidated, but just disputed by the Debtor. The amounts are known, but disputed. The events upon which claims are based have occurred, but the liability for such acts disputed.** *See* Proof of Claim No. 5-1 filed by Ms. Gaunia, Attachment specifying events during the period of 2013 through 2015 upon which the claim is based and computation of obligation.
>
> Adding of the non-contingent, liquidated unsecured claims as stated on the Schedules (including Ms. Gaunia's claim), **the unsecured claims in this case (without taking into account any additional amounts the Debtor in good faith should state for the $1 claims) total $452,704.02 even without including the additional $12,032.64 in the Exeter unsecured claim**, and well exceed the Chapter 13 debt limits prescribed in 11 U.S.C. § 109(e).
>
> **Debtor's filing of this second Chapter 13 case following the dismissal of the prior case, that judge's review of the 11 U.S.C. § 109(e) computation, and Debtor's return filing of this case raises serious good faith issues**. Rather than diligently prosecuting the prior case in Chapter 11 as the opportunity was presented in the prior case, or electing to convert it to Chapter 7, Debtor elected to have the case voluntarily dismissed on Debtor's own motion.

Civil Minutes, Dckt. 49.

Debtor's Opposition has only cemented what the court has already found. Debtor's counsel argues Debtor does not believe there are any valid claims. Opposition, Dckt. 119 at p. 4:19-21. The dispute here is as to liability, not the events giving rise to liability or the amounts owing.

Debtor's counsel argues the amount of claims are not readily ascertainable because:

> they are not as no difference, no admissible verification as to the times worked, whether double over-time actually worker, and the amount of payments actually received, and therefore is 'not' readily ascertainable.

Id. at p. 2:25-3:2. This argument is hard to comprehend, but appears to in essence be an extension of the argument that Debtor is not liable until Debtor is found liable. Debtor has not actually disputed any actual amounts or the method of computation. There is only a blanket denial, which is unsupported.

Furthermore, as noted at the prior hearing, Debtor's petition was not filed in good faith. This court and another court in Debtor's prior hearing have made findings as to Debtor's eligibility. Notwithstanding those findings, Debtor has reasserted the same arguments.

Debtor lists several employee claims at $1.00, but also argues there is no liability on these claims. If Debtor were truly not liable, it is unclear why any claim is listed at all.

Review of Current Schedules, Proofs of Claim, and Applicable Law

Going back to Debtor's Schedules and claims, one begins with Schedule D, secured claims. The claims as listed by Debtor under penalty of perjury are:

Exeter Finance Corporation
Amount of Claim.....($26,532) [FN. 1]

Collateral.....2013 BMW
Value of Collateral.....$14,500

Westlake Financial Services
Amount of Claim.....($15,725)
Collateral.....2017 Mazda 3
Value of Collateral.....($14,900)

Franchise Tax Board
Amount of Claim.....($18,833)
Collateral.....McCarron Property
Value of Collateral.....$393,000

HSBC Bank
Amount of Claim.....($337,004)
Collateral.....McCarron Property

Dckt. 1 at 21-23.

FN. 1. The court rounds the amount to the dollar and not state the cents for each claim as stated by Debtor.

For unsecured claims, Debtor lists claims under penalty of perjury on Schedule E/F of ($472,780). Most claims are listed at ($1) and disputed. There are also another ($13,000) for the under secured portions of the two vehicle secured claims. The two largest unsecured claims are:

Adela Gaunia.....($149,718)
All the boxes checked for
Contingent
Unliquidated
Disputed

Benjamin Villanueva.....($154,075)
Disputed
Listed as disputed notwithstanding that
the claim is based on a judgment

Debtor asserts that since the Gaunia claim is stated to be Contingent, and Unliquidated, and Disputed, then it does not count in considering whether Debtor meets the Chapter 13 debt limits under 11 U.S.C. § 109(e).

Debtor asserts because Debtor states that the Gaunia claim is continent - then it is contingent. As shown in Proof of Claim No. 2 filed in Debtor's prior case and Proof of Claim No. 2-1 in this case, the claim is for unpaid wages during 2013, 2014, and 2015.

Debtor offers no credible explanation as to what contingency exists for the claim asserted. Rather, in light of the prima facie evidentiary value of a proof of claim, Debtor merely argues:

> At the hearing, the Court was not provided evidence that the damages are "not contingent on some future event" at that time, as counsel failed to note differences between the claim for Gaunia in case #18-25342, Proof of Claim #5-1, totaling $149,718.63, and case #19-22653, Proof of Claim #2-1, totaling $175,196.52, stating "for settlement purposes only", and as most lawsuits the amounts litigated are seldom that which the plaintiffs seek.

Opposition, p. 2:13-20; Dckt. 119. In the above, Debtor admits that the events have all occurred, with the dispute being as to the dollar amount as stated in detail in the two proofs of claim.

The Gaunia Claim is Not Contingent

The requirement that the obligation not be contingent is discussed in Colliers on Bankruptcy as follows:

> [b] Only Noncontingent Debts Counted Toward Chapter 13 Limitations
>
> In deciding whether a claim is noncontingent, and therefore counted toward the

> debt limits, courts have generally ruled that **if a debt does not come into existence until the occurrence of a future event, the debt is contingent**. A claim is contingent as to liability **if the debtor's legal duty to pay does not come into existence until triggered by the occurrence of a future event**. Thus, a **creditor's claim is not contingent when the "triggering event" occurred before the filing of the chapter 13 petition.** In some cases, there may be a dispute regarding whether the "triggering event" has occurred—for example, because the party whose debt the debtor guaranteed raises defenses to the principal debt. In others, the debtor may be found to be jointly and severally liable under state law, and no prior recourse to the principal debtor is required.
>
> In certain circumstances, a criminal conviction may support a claim that is noncontingent and thus must be included in the section 109(e) calculations. However, a criminal conviction does not allow the court to impute civil liability stemming from the same occurrence, and therefore a pending tort claim is contingent. A disputed debt can be a noncontingent debt within the meaning of section 109(e), although it may be unliquidated, as discussed below.

COLLIER ON BANKRUPTCY, SIXTEENTH EDITION, ¶ 109.06 (case citations omitted).

Other than saying the word "contingent," Debtor offers no legal basis for asserting that a claim, while disputed, for past due wages, is "contingent." Debtor offers the unsupported argument that:

> Here, the liability demanded by the claimant's proof of claim does not come into existence until triggered by the occurrence of a court judgment, which has not occurred.

Id. at 2:21-23. No legal authority is asserted for the contention that no obligation exists until a judgment is entered. The reason no authority is given is that it is a fallacious argument.

Many years ago the Ninth Circuit Court of Appeals addressed the issue of what constitutes a contingent debt, clearly holding that merely because a debt had not been reduced to a judgment and the amount asserted was disputed, that did not make it contingent.

> Second, the rule is clear that a contingent debt is "one which the debtor will be called upon to pay only upon the occurrence or happening of an extrinsic event which will trigger the liability of the debtor to the alleged creditor." *Brockenbrough v. Commissioner*, 61 Bankr. 685, 686 (W.D. Va. 1986), quoting In re All Media Properties, Inc., 5 Bankr. 126, 133 (Bankr. S.D. Tex. 1980), *affd. per curiam*, 646 F.2d 193 (5th Cir. 1981). "Where a contract was entered into by parties who did not contemplate that any further act had to be completed in order to trigger contractual liability, then such liability would not be contingent." *Lambert*, 43 Bankr. at 922. In the present case, no further act or extrinsic event was needed to trigger Fostvedt's liability on the two notes. We therefore hold that Fostvedt's debt was noncontingent for purposes of section 109(e), and we affirm the district court's order.

In re Fostvedt, 823 F.2d 305, 306-307 (9th Cir. 1987). In using Shepard's to review the subsequent citing of *Fostvedt,* it reports it having been cited in 53 federal court decision, 39 of which are in the Ninth Circuit. The most recent is in *Camelback Constr. v. Castellino Villas, A.K.F. LLC (In re Castellino Villas, A.K.F. LLC)*, 836 F.3d 1028, 1033 (9th Cir. 2016) (emphasis in original), which states:

> A claim is "contingent" when "the debtor will be called upon to pay [it] only upon the occurrence or happening of an extrinsic event which will trigger the liability of the debtor to the alleged creditor." *In re Fostvedt*, 823 F.2d 305, 306 (9th Cir. 1987) (internal quotation marks omitted). A claim is "unliquidated" when it is not "subject to ready determination and precision in computation of the amount due." *Id*. (internal quotation marks omitted).

It is clear that the obligation being asserted is not "contingent," but is asserted to be fully due and owning, and an obligation which is asserted to be due in full.

The Gaunia Claim is Liquidated

Debtor also argues that the obligation is not "liquidated," asserting that is not liquidated because Debtor does not agree how it is computed. Interestingly, Debtor fails to cite Ninth Circuit Court of Appeals decisions directly on point in determining what is "liquidated" for purposes of 11 U.S.C. § 109(e).

Going all the way back to 1990, the Ninth Circuit Court of Appeals affirmed the Bankruptcy Appellate Panel decision *In re Wenberg,* 94 B.R. 631, 633-634 (B.A.P. 9th Cir. 1988), *affrm*. 902 F.2d 768 (9th Cir. 1990) ("We AFFIRM for the reasons stated in the opinion of the Bankruptcy Appellate Panel.") [emphasis added], which states:

> The essential issue in this appeal is whether the $ 34,989.00 in accounting fees and the $ 18,967.50 in attorneys' fees constituted a "liquidated" debt at the time of the filing of the debtors' petition for purposes of § 109(e). In previously addressing this issue, the Bankruptcy Appellate Panel recognized that whether a debt is **"liquidated" for purposes of § 109(e), is determined by "whether the amount due is capable of ascertainment by reference to an agreement or by simple computation.**" *In re Sylvester*, 19 B.R. 671, 673 (9th Cir. BAP 1982) (quoting In re Bay Point Corp., 1 B.C.D. 1635 (D.N.J. 1975)). Accordingly, the BAP adopted the standard of "readily ascertainable" in determining whether a particular debt would be deemed liquidated. *Id.* Additionally, the court held that **although the amount may be disputed, such a dispute is "not relevant for purposes of section 109(e)**." *Id.*
> . . .
> The debtors also argue that *Sylvester* is limited to only "contract debts" (19 B.R. at 673), and that the attorneys' fees in the instant case were not based on any contract or agreement. In distinguishing the instant debt based on an award for costs and attorneys' fees with a contract debt, the debtors point out that the award for attorneys' fees and costs is subject to a "reasonableness" determination. This argument, however, **fails to recognize that the bankruptcy court was not**

making a final determination as to the reasonableness of the attorneys' fees and costs, but was expressly limited to a determination for § 109(e) purposes. The debtors' objection to the reasonableness of the attorneys' fees and costs is analogous to a debtor's assertion of a defense to a contract debt. Such final determinations are more appropriately addressed in a proceeding to determine the allowance of a specific claim under § 502 and should be separate from the application of § 109(e).

As shown above, this "is the amount asserted subject to ready determination" was also recently restated in *Camelback Constr. v. Castellino Villas, A.K.F. LLC (In re Castellino Villas, A.K.F. LLC)*, 836 F.3d at 1033.

Here, while Debtor states various disputes as to the amount, and why the Debtor should not be obligated to pay and other "disputes," the amount claimed by Ms. Gaunia is liquidated and stated in detail. The amount that Ms. Gaunia is "capable of ascertainment by reference to an agreement [employment by Debtor] or by simple computation [Ms. Gaunia's detailed computation of hours worked and unpaid or under paid]."

The court places in this ruling the detailed computations set forth in both Proof of Claim No. No. 2 filed in Debtor's prior case and Proof of Claim No. 2-1 in this case, the claim is for unpaid wages during 2013, 2014, and 2015.

Year	Days Worked/ Year	Regular Time Hours per Year	$1^{1/2}$ OT Hours per Year	Double OT Hours per Year	Salary
6/21/13-12/31/13	166	1160	0	1490	$ 8.00
1/1/14-6/30/14	154	1066	0	1401	$ 8.00
7/1/14-12/31/14	157	1108	0	1407	$ 9.00
1/1/15-3/6/15	55	378	0	505	$ 9.00
Total	**532**	**3712**	**0**	**4803**	

	REGULAR			**$1^{1/2}$ OT**			**DOUBLE OT (Including On-Call Hours)**		
Year	**Regular Time Hours Worked per Year**	**Last Hourly Wage Regular**	**Total Regular Wages per Year**	**$1^{1/2}$ OT Hours Worked per Year**	**Last Hourly wage $1^{1/2}$ OT Hour**	**Total $1^{1/2}$ OT Wages per Year**	**Double OT Hours Worked per Year**	**Last Hourly Wage/ Double OT Hour**	**Total Double OT Wages per Year**
6/21/13-12/31/13	1160	$ 8.00	$9,280.00	0	$12.00	$0.00	1490	$16.00	$23,840.00
1/1/14-6/30/14	1066	$ 8.00	$8,528.00	0	$12.00	$0.00	1401	$16.00	$22,416.00
7/1/14-12/31/14	1108	$ 9.00	$9,972.00	0	$13.50	$0.00	1407	$18.00	$25,326.00
1/1/15-3/6/15	378	$ 9.00	$3,402.00	0	$13.50	$0.00	505	$18.00	$9,090.00
	Total Regular Wages Earned		**$31,182.00**	**Total 1 ½ OT Wages Earned**		**$0.00**	**Total Double OT Wages Earned**		**$80,672.00**
TOTAL WAGES EARNED									**$111,854.00**
TOTAL WAGES									

(Total Regular + Total 1 ½ OT + Total Double OT	$111,854.00
Less Total Wages Estimated Paid	($40,286.00)
TOTAL UNPAID WAGES DUE	**$71,568.00**

Calculation of Hours Per Day Per Wage Order 5-2001 3(A)(2)				
Actual working schedule:	Worked Mon-Sat 2pm-9am			
			Regular Hours	Double Overtime
Day 1: Mon 2pm-12am			10	0
Day 2:Tues 12am-9am; 2pm-12am			16	3
Day 3:Wed 12am-9am;2pm -12am			16	3
Day 4: Thurs 12am-9am;2pm -12am				19
Day 5: Fri 12am-9am; 2pm-12am				19
Day 6: Sat 12am-10am				10

Compensation for Split-Shift, calculated at 1 hour, $9.00/hour

Year	**Split-shift Comp**	**Days worked/ Year**	**Total Split-shift compensation hours**	**Last Hourly Rate**	**Total Compensation**	
6/21/13-12/31/13	1	166				***See Wage order 5-001, 4(c)**
1/1/14-6/30/14	1	154				
7/1/14-12/31/14	1	157				
1/1/15-3/6/15	1	55	532	$9.00	**$ 4,788.00**	

Missed Break Penalty

Year	**Missed Breaks/ Day**	**Missed Breaks/ Year**	**Last Hourly Rate**	**Penalty per Year**	**Total Penalty**
6/21/13-12/31/13	1	166	$ 8.00	$ 1,328.00	
1/1/14-6/30/14	1	154	$ 8.00	$ 1,232.00	
7/1/14-12/31/14	1	157	$ 9.00	$ 1,413.00	
1/1/15-3/6/15	1	55	$ 9.00	$ 495.00	**$ 4,468.00**

Missed Meal Penalty

Year	**Missed Meals/ Day**	**Missed Meals/ Year**	**Last Hourly Rate**	**Penalty per Year**	**Total Penalty**
6/21/13-12/31/13	1	166	$ 8.00	$ 1,328.00	
1/1/14-6/30/14	1	154	$ 8.00	$ 1,232.00	
7/1/14-12/31/14	1	157	$ 9.00	$ 1,413.00	
1/1/15-3/6/15	1	55	$ 9.00	$ 495.00	**$ 4,468.00**

Waiting Time Penalty Wages for 30 Days				
below*)	**Penalized**	**Wages Due**	**Penalty**	**Total Penalty**
$ 270.00	30	$ 8,100.00	up to 30 days	**$ 8,100.00**

***Average Daily Rate Calculation: 2015 minimum wage daily rate per hours worked**

Day worked	**Regular Hours**	**Double OT hours**	**Total**	**Average per day/5day week**
Day 1 Mon 2pm-12:00 am	10x$9= $90	0	$ 90.00	
Day 2 Tues 12am-9am; 2pm-12am	16x$9= $144	3 x $18 = $54	$ 198.00	
Day 3 Wed 12am-9am; 2pm-12am	16x$9= $144	3 x $18 = $54	$ 198.00	
Day 4 Thurs 12am-9am; 2pm-12am	0	19 x $18 = $342	$ 342.00	
Day 5 Fri 12am-9am; 2pm-12am	0	19 x $18 = $342	$ 342.00	
Day 6 Sat 12am-10a	0	10 x $18 = $180	$ 180.00	**$ 270.00**

Interest Penalty on Unpaid Wages Until 5/1/19

10% per year (.83%/month)

Total Wages Earned	**Wages Earned**	**Estimated Wages Paid**	**Unpaid Wages**	**Daily Interest Rate**	**# Days Wages UnPaid Until 5/1/19**	**TOTAL DUE**
6/21/13-12/31/13	$33,120.00	-$10,200.00	$22,920.00	$6.28	1990	$12,496.11
1/1/14-6/30/14	$30,944.00	-$10,880.00	$20,064.00	$5.50	1809	$9,944.05
7/1/14-12/31/14	$35,298.00	-$12,969.00	$22,329.00	$6.12	1625	$9,940.99
1/1/15-3/6/15	$12,492.00	-$6,237.00	$6,255.00	$1.71	1560	$2,673.37
						$35,054.52
Failure to Produce Records Penalty					**$ 750.00**	
		DAMAGES			**$129,196.52**	
Attorney Fees					**$ 46,000.00**	
TOTAL CLAIM					**$ 175,196.52**	

Debtor has the right to dispute the amount, to litigate the dispute, and to require that Ms. Gaunia present evidence to support the claim in an objection to claim evidentiary hearing. But, as stated decades ago by the Ninth Circuit Bankruptcy Appellate Panel and the Ninth Circuit Court of Appeal, Debtor (and Debtor's counsel),

> [f]ails to recognize that the bankruptcy court was not making a final determination as to the reasonableness of the attorneys' fees and costs, but was expressly limited to a determination for § 109(e) purposes. The debtors' objection to the reasonableness of the attorneys' fees and costs is analogous to a debtor's assertion of a defense to a contract debt. Such final determinations are more appropriately addressed in a proceeding to determine the allowance of a specific claim under § 502 and should be separate from the application of § 109(e).

In re Wenberg, 94 B.R. at 634, *affrm.* 902 F.2d 768 (9th Cir. 1990)

The claim, for purposes of 11 U.S.C. § 109(e) the Gaunia Claim is liquidated.

Request for Conversion and Appointment of a Chapter 11 Trustee

The Motion requests conversion of this case to one under Chapter 11, asserting that there are assets to be recovered, transfers to be avoided, and a bankruptcy case to be properly administered. At any time before confirmation of a Chapter 13 Plan, on request from a party in interest and after a noticed hearing, the court may convert the case under Chapter 13 to a case under Chapter 11. 11 U.S.C. § 1307(d).

Colliers on Bankruptcy provides the following overview of this Bankruptcy Code sction:

> At the instance of a party in interest, including the debtor, or the United States trustee, the court may convert a chapter 13 case to a case under chapter 11 or 12, provided conversion is ordered before the confirmation of a chapter 13 plan. The court may act only upon the request of a party in interest or the United States trustee and after notice and a hearing. The court may not convert a chapter 13 case commenced by a farmer to chapter 7, 11 or 12, unless the debtor requests that the court do so. The court has discretion to deny a motion to convert the case to chapter 11 or chapter 12. Thus, for example, a court may deny a conversion motion if the court does not believe a plan under the desired chapter can be effectuated.
>
> Chapter 13 is open to individuals with regular income engaged in business. Chapter 11 relief is likewise available to individuals engaged in business and to other individuals as well. Congressional action in permitting individual business debtors to make use of chapter 13 does not represent a presumption in any particular case that the debtor may not more appropriately belong in chapter 11. Section 1307(d) permits the court to redirect the debtor into chapter 11 where appropriate, subject, of course, to the right of a farmer to avoid such conversion, and subject to the right of any chapter 13 debtor, whose case was not converted to chapter 13 from chapter 7, 11 or 12, to demand dismissal of the chapter 13 case.

8 COLLIER ON BANKRUPTCY P. 1307.05 [1] (16th 2019).

Another secondary authority provides the following analysis:

Code § 1307(d) does not specify the standards for determining whether to permit

> conversion to Chapter 11 or Chapter 12. The court thus has discretion to determine the issue, taking into account factors such as whether the debtor filed the Chapter 13 case and the request for conversion in good faith, whether it is likely that the debtor will be able to effectuate a plan in the converted case, and whether creditors have suffered or will suffer prejudicial delay. It is also appropriate to determine whether grounds for dismissal or conversion in the converted case (Code § 1112(b) in Chapter 11 cases and Code § 1208(c) in Chapter 12 cases)) exist that would lead to termination of the converted case.13 The issue involves a balancing of the interests of both the debtor and creditors.

§ 20:7.CONVERSION TO CHAPTER 11 OR 12, CHAPTER 13 PRACTICE & PROCEDURE § 20:7.

Here, there are substantial assets of the Debtor that are now property of the bankruptcy estate. There is a history of Debtor filing and having dismissed the prior bankruptcy case. There is the Debtor's current opposition that shows a disregard of well established Ninth Circuit law. Though now having multiple opportunities to avail themselves of the relief under Chapter 11 of the Bankruptcy Code, Debtor has refused to seek to convert the case and reorganize.

The Schedules filed by Debtor show a complex financial system of multiple corporate entities in which Debtor has done business. This is not a simple Chapter 7 liquidation, based on what Debtor has filed, and not a Chapter 11 reorganization that Debtor can, or apparently wants to, diligently prosecute in good faith.

The court concludes that Debtor is not capable of prosecuting a reorganization in this case. Further, the court notes that if converted to Chapter 7 liquidation of assets would occur where value could be saved, not only for creditors but Debtor, through a possible reorganization. Conversion to Chapter 11 and appointment of a Chapter 11 trustee to serve as the fiduciary of the bankruptcy estate is necessary and proper. It may be that the independent fiduciary Chapter 11 trustee concludes that the case should be converted. If so, then such could be sough from the court by that fiduciary to the bankruptcy estate.

The Motion is granted, the case is converted to one under Chapter 11, and the appointment of a Chapter 11 trustee by the U.S. Trustee is ordered.

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 the Chapter 13 case filed by creditors Benjamin Villanueva and Adela Bon Gaunia ("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 Motion to Convert the Bankruptcy Case to one under Chapter 11 and appoint a Chapter 11 Trustee is granted, and this case is converted to one under Chapter 11 of the Bankruptcy Code.
>
> **IT IS FURTHER ORDERED** that a Chapter 11 Trustee in the case shall be appointed and this order for appointment is made to the U.S. Trustee for Region 17.

18.	**14-28961-E-13 RHS-1**	**RODEL MAULINO AND MIMSY ABARA-MAULINO**	**ORDER TO SHOW CAUSE 6-24-19 [150]**
		Mitchell Abdallah	

APPEARANCE OF MITCHELL ABDALLAH, COUNSEL FOR DEBTOR, AND ALL EMPLOYEES OF THE ABDALLAH LAW GROUP, P.C., REQUIRED FOR HEARING TO ADDRESS COURTCALL DISCREPANCY

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. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

The court issued an Order to Show Cause on June 24, 2019. Order, Dckt. 150. .

The Order to Show Cause is XXXXXXXXX.

The court issued an Order to Show Cause ("OSC") on June 24, 2019. Dckt. 150. The Order set a hearing to consider the imposition for sanctions (in conjunction with the Motion To Dismiss) for July 16, 2019 and required a Response be filed on or before July 3, 2019, and Replies, if any, be filed on or before July 12, 2019. The Order further required that Mitchell Abdallah and every employee or person working at his law firm; whether an employee, independent contractor, person using or subleasing space; whether for salary, commission, in-kind compensation, or for no current compensation; and each of them, shall appear at the July 16, 2019 hearing–no telephonic appearances permitted.

The corrective sanctions under consideration are: (1) a $5,000.00 civil sanction to discourage such further false appearances; (2) suspending Mitchell Abdallah's telephonic appearance privileges for a period of two years; (3) Mitchell Abdallah paying the legal fees and costs for Debtors to obtain replacement counsel to represent them in this case and try to save this case from dismissal; and (4) Mitchell Abdallah compensating the Debtors for any loss, cost, expense, and emotional distress if this bankruptcy case is dismissed and the Debtor's efforts for more than four years that were lost by the failure of representation in this case.

EVENTS LEADING TO AND ISSUANCE OF ORDER TO SHOW CAUSE

On June 16, 2019, the court conducted the continued hearing on the Motion to Dismiss this

Chapter 13 case due to the default in Plan payments by Debtors under their Chapter 13 Plan. This case having been filed and the Chapter 13 Plan having been confirmed in 2014, the Debtors are in the closing months of their five-year Plan. To address the default, Debtors have filed a proposed modified Chapter 13 plan, with the hearing on that motion set for hearing in July 2019. Mitchell Abdallah (also referenced as "Mitch Abdallah" in this Order) is counsel for Rodel Maulino and Mimsy Abara-Maulino, the two Chapter 13 Debtors.

When the court called the case, Talvinder Bambhra, Esq., appeared in court for the Chapter 13 Trustee. A telephonic appearance was made by a male individual who stated his name to be Mitch Abdallah, the attorney of record for the Debtors in this bankruptcy case. At that point counsel for the Chapter 13 Trustee spoke up and stated that the voice of the person stating he was Mitch Abdallah was not Mr. Abdallah's voice. Trustee's counsel stated that at the prior hearing on the Motion to Dismiss he thought that the voice of the person appearing telephonically who identified himself as Mitch Abdallah did not sound right, but chocked it up to Mr. Abdallah having a cold. When he heard it again at the June 19, 2019 hearing, he spoke up.

At that point the court asked the person appearing by phone who had stated he was Mitch Abdallah to please identify himself. There was a moment of silence, then a click, and then the line went dead. The CourtCall operator then came on the line, advising the court that the person who identified himself as Mitch Abdallah had terminated the phone connection. The CourtCall operator confirmed that the caller who identified himself as Mitch Abdallah, had initiated the telephonic appearance from the 916-446-1974 phone number.

This number, 916-446-1974, is the phone number that Mitch Abdallah lists as his office phone number on his pleadings filed with the court. See Motion, Dckt. 28. This is also the phone number that Mitch Abdallah lists for his office on his webpage. https://abdallahlawgroup.com/.

Misrepresentation of Identity

It appears that someone in Mitch Abdallah's office is making phone appearances, misrepresenting that he is Mitch Abdallah. This appears to have been done intentionally to mislead and deceive the court. The privilege of making telephonic appears is permitted to allow attorneys to represent a larger group of clients, over a larger geographic area, in a more cost efficient manner.

Bankruptcy courts have jurisdiction and the authority to impose sanctions, even when the bankruptcy case itself has been dismissed. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384,395 (1990); *Miller v. Cardinale (In re DeVille)*, 631 F.3d 539, 548-549 (9th Cir. 2004). The bankruptcy court judge also has the inherent civil contempt power to enforce compliance with its lawful judicial orders. *Price v. Lehtinen (in re Lehtinen)*, 564 F.3d 1052, 1058 (9th Cir. 2009); see 11 U.S.C. § 105(a).

Federal Rule of Bankruptcy Procedure 9011 imposes obligations on both attorneys and parties appearing before the bankruptcy court. This Rule covers pleadings filed with the court. If a party or counsel violates the obligations and duties imposes under Rule 9011, the bankruptcy court may impose sanctions, whether pursuant to a motion of another party or sua sponte by the court itself. These sanctions are corrective, and limited to what is required to deter repetition of conduct of the party before the court or comparable conduct by others similarly situated.

A bankruptcy court is also empowered to regulate the practice of law in the bankruptcy court.

Peugeot v. U.S. Trustee (In re Crayton), 192 B.R. 970, 976 (B.A.P. 9th Cir. 1996). The authority to regulate the practice of law includes the right and power to discipline attorneys who appear before the court. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991); see Price v. Lehitine, 564 F. 3d at 1058.

In ordering Mr. Abdallah and his employees and contractors to appear, the court noted the following with respect to the unlicensed practice of law:

> The court does not, at this point in time, know who the Mitch Abdallah impersonator was on the phone for the June 19, 2019 hearing. The court does not know if Mitch Abdallah was aware of the imposter making the appearance and directed it to occur, or whether there is an underground operation in Mr. Abdallah's office in which non-lawyers are siphoning off clients and legal fees with under the table legal services.[1]
>
> What is clear to the court is that Mitchell Abdallah and every employee or other person working in Mr. Abdallah's office, whether for salary, commission, fee, in kind compensation, or for no direct compensation, must appear in court to address this situation.
>
> _____
>
> [1] The underground non-attorney legal services within a law office is not unheard of in this District. Recently it was discovered that a paraprofessional in working for an attorney who appears in the Modesto Division was discovered to have been purporting to do work for that attorney's clients, was doing "off the books" work, and was diverting the attorney debtor clients' plan payment monies into the paraprofessional's pocket. That paraprofessional is currently being prosecuted by the U.S. Attorney for multiple felony criminal counts.

Order to Show cause, p. 3:19-28, 4:1-3.; Dckt. 150.

RESPONSE TO OSC

Debtor's counsel Mitchell Abdallah filed a Response to the OSC on July 3, 2019. Dckt. 152. Debtor's counsel states the following:

1. Debtor's counsel was on vacation from June 6 through June 22, 2019 with very limited internet and phone access. *Id.*, ¶ 4.

2. Due to calendaring error Debtor's counsel did not see any hearings falling during his vacation. *Id.*, ¶¶ 5-6.

3. Debtor's counsel employs Mervyn Naidoo and Ruben Valasquez, both lawschool graduates, as law clerks. *Id.*, ¶ 7.

4. Mr. Naidoo informed Debtor's Counsel he had appeared telephonically to listen-only to the hearing on the Motion to Dismiss and other hearings, identifying himself as "Mitchell Abdullah" believing that was

necessary to use the office's access to court call. *Id.*, ¶¶ 8-11. Mr. Naidoo had in the past called in to court call identifying himself as Debtor's counsel, and even addressing the court at times. *Id*. Upon learning the call was not listen-only, Mr. Naidoo terminated the call. *Id.*

5. Debtor's counsel did not authorize Mr. Naidoo to appear on his behalf. *Id.*, ¶ 10.

6. Debtor's counsel is acutely conscious of his professional responsibilities because he was disciplined by the State Bar in 2012. *Id.*, ¶ 13.

Debtor's counsel filed the Declarations of Mitchell Abdullah and Mervyn Naidoo providing testimony supporting the factual assertions of the Reply. Dckts. 153, 154.

In Mr. Naidoo's declaration he says that he has been employed with Abdallah Law Group, P.C. for approximately ten years. Declaration ¶ 1, Dckt. 154. He further testifies that the office calendaring system alerted him of a hearing on the motion to confirm the plan in this case. *Id.*, ¶ 4. Mr. Naidoo's testimony is that the hearing on the motion to confirm was entered into the firm's calendaring system.

Mr. Naidoo then gives unclear testimony, stating that he "didn't know that the court call was still scheduled." *Id.* ¶ 6. He does not indicate why he, a person who would never properly make a telephonic appearance, would have knowledge of a telephonic appearance being scheduled.

Then, in his Declaration Mr. Naidoo provides non-responsive testimony that he believed that he was allowed to listen in via phone. *Id.* ¶ 8. Mr. Naidoo did not merely listen in, but he actively misrepresented to the court that he was Mr. Abdallah making the appearance.

He then states that when the case was called and those listening in by phone had to identify themselves, he (a law school graduate and person with at least ten years experience working as a law clerk) believed that he should misidentify himself as Mr. Abdallah. *Id.,* ¶ 9. No explanation is provided for this law school graduate, experienced law clerk for making such knowing misidentification in federal court is given.

He then continues, and states that he, as a law school graduate and experienced law clerk, in misrepresenting himself to be Mr. Abdallah, a licensed attorney, "would be interpreted as being deceptive or dishonest to the Court." *Id.*, ¶ 11. No reasoning is given by this law school graduate and experienced law clerk why he would believe misrepresenting his identify in federal court would not be a deceptive, dishonest act.

For the hearing on June 19, 2019, he provides testimony consistent with Mr. Abdallah's that the critical hearing on the motion to dismiss this almost five year old case was not on the calendar. *Id.*, ¶ 13. He testifies that it was merely because he was reviewing the several files on his desk, that he somehow noticed that there was a hearing in this case. *Id.*, ¶ 14. He offers no explanation as to why or how it just happened that of the several files on his desk just happened to be the one for this case.

Mr. Naidoo then took it upon himself to contact CourtCall to arrange a phone appearance for the hearing on June 19, 2019. *Id.,* ¶ 17. In arranging the CourtCall service he made it in the name of

Mr. Abdallah, and then affirmatively misrepresented that he was Mr. Abdallah when the court asked those appearing telephonically to identify themselves.

When the court asked the person stating he was Mr. Abdallah to identify himself, the caller immediately disconnected. Mr. Naidoo testifies that when the court asked him to identify himself, "I became extremely nervous and in a state of panic immediately terminated the court call to limit any further wrongful conduct that I may have unknowingly initiated." *Id.*, ¶ 20.

This testimony is not credible. The court expressly asked the person appearing on the phone to identify himself. If Mr. Naidoo was in the courtroom and the judge as him to identify himself, Mr. Naidoo appears to be stating that he believes he could just shake is head at the judge and run from the courtroom, electing to veto the judge. Any law student, much less a law school graduate and experienced law clerk knows that one cannot "cut and run" when in court.

It is also unclear why Mr. Naidoo would have become nervous since he believed he was permitted to listen in to court proceedings, and believed he was required to identify himself as Mitchell Abdullah in order to do so. *See Id.*, ¶ 9.

Given that the charges for CourtCall are made for each time it is used, it is not credible that Mr. Abdallah and his firm did not know that non-attorneys were making court appearances. Mr. Naidoo affirmatively states that all he has done at Abdallah Law Group "has been with the supervision and authorization of Mr. Abdallah." *Id.,* ¶ 25.

Thus, Mr. Naidoo has testified that when he has appeared in court using CourtCall and misstated in federal court that he is Mr. Abdallah, it "has been with the supervision and authorization of Mr. Abdallah."

Mr. Abdallah provides his testimony in response to the Order to Show Cause. Declaration, Dckt. 153. Mr. Abdallah testifies that he has three full time employees who are under his direct control. Declaration ¶ 3, Dckt. 153. Mr. Abdallah does not testify how many employees he has, such as part-time, or other contract or other persons who work at his office.

He testifies that during the period from June 6, 2019 through June 22, 2019, he was on an extended trip, celebrating several significant life events. *Id.* ¶ 4.

Mr. Abdallah testified that prior to leaving he checked his litigation files and calendars and did not believe he had any hearings during that three week period. *Id.* ¶ 5.

He further testifies that the two employees, Mervyn Naidoo and Ruben Valasquez, are familiar with the workings of his law office, and "importantly, **both** are law school graduates and **understand the different responsibilities between a law clerk versus an attorney**." *Id.* ¶ 7 (emphasis added). By this testimony Mr. Abdallah clearly states that Mr. Naidoo knows he is not an attorney, knows that he cannot misrepresent himself to be an attorney, and knows that he cannot misrepresent himself to be someone else (Mr. Abdallah) who is an attorney. Buy this testimony Mr. Abdallah states that Mr. Naidoo knowingly and intentionally misrepresented that he was Mr. Abdallah. By his testimony, Mr. Naidoo states that in doing this it was under the direction, supervision, and knowledge of Mr. Abdallah.

Mr. Abdallah then presents conflicting testimony to that of Mr. Naidoo, stating that he questioned why Mr. Naidoo had engaged in actions for the office that Mr. Abdallah purports to have no knowledge of - misrepresenting to the court that Mr. Naidoo was Mr. Abdallah. *Id.* ¶ 10.

Location of Abdallah Law Group, P.C. Office

Abdallah Law Group, P.C. has its office at 555 Capital Mall in Sacramento. The Federal Courthouse is at 501 I Street in Sacramento. Using Google Maps, the distance between the two is stated to be 0.5 miles and a ten minute walk. For someone that close to the courthouse who wanted to just "observe" the public hearings, there is little reason for why that person would not take the ten minute walk to the courthouse. Then, once there, sit in the courtroom and observe the public proceedings, with no need to identify himself or misrepresent that he was Mr. Abdallah, a licensed attorney.

Exhibits

Also in support of the Motion, Debtor's counsel filed employee resumes, a travel itinerary, and a work calendar as exhibits A–C. Dckt. 155.

Exhibit A is identified as the "employee resumes." In addition to resumes for Ruben Velasquez and Mervyn Naidoo, there is a resume for a Desiree Dundon as well. Exhibit A, Dckt. 155.

Exhibit C is identified as excerpts from the Abdallah Law Group office calendar showing appointments and hearings. For Friday June 14, 2019, it shows that "RV," Ruben Velasquez is scheduled to attend a "Mandatory Settlement Conference." Mr. Velasquez is not an attorney and the court is unsure how he can be scheduled to attend a "Mandatory Settlement Conference." Exhibit C, Dckt. 155 at 11.

For Tuesday June 11, 2019, in addition to the flight information for Mr. Abdallah's trip, there is the following entry:

MLA [Mitchell L. Abdallah]; COURTCALL - MTC - Modified Chapter 13 Plan

Id. The entry for that day also states that "NM" (Mervyn Naidoo) and the other employees were "Out of Office."

DISCUSSION

In reviewing the Reply to the OSC and supporting documents, several inconsistencies appear.

Mr. Abdallah testifies that he had no knowledge that his law clerk Mr. Naidoo was making telephonic appearances, and that he was not authorized to make appearances. Declaration, ¶ 10, Dckt. 153. However, the Naidoo Declaration affirmatively states that after appearing at the June 11, 2019 hearing, identifying himself as Mitchell Abduallah, and accepting the tentative ruling, Mr. Naidoo then called Mr. Abdullah to discuss that hearing. Declaration ¶ 10, Dckt. 154.

More significant, Mr. Naidoo testifies that all he has done at Abdallah Law Group "has been with the supervision and authorization of Mr. Abdallah." *Id.*, ¶ 25.

While Mr. Abdallah filed his personal calendar to indicate he had no knowledge of the June 19 hearing, that calendar indicates Debtor's counsel did have knowledge of a June 11, 2019 hearing wherein his law clerk appeared, misrepresenting to the court that he was Mr. Abdallah. Exhibit C, Dckt. 155.

The calendar clearly states that Mervyn Naidoo, and Ruben Valasquez were each out of the office from June 6 through June 21, 2019. Mr. Abdallah provides conflicting testimony that Mr. Naidoo and Mr. Valasquez were working normal business hours. Declaration ¶ 7, Dckt. 152.

The calendar also indicates counsel's other law clerk Ruben Valasquez was making an appearance at a mandatory settlement conference on June 14, 2019.

In addition to the evidence that Mr. Abdallah had actual knowledge of and supervised Mr. Naidoo making appearances in which he misrepresented to the court that he was Mr. Abdallah, it is notable that this Motion did not sneak up on counsel. The first hearing on this Motion To Dismiss was April 24, 2019. Civil Minutes, Dckt. 119. The Motion was brought as a result of a $10,584.64 delinquency in plan payments. Motion, Dckt. 112. At the April hearing the Trustee reported the delinquency was significantly reduced, and the court continued the hearing to allow a modified plan to be filed. Civil Minutes, Dckt. 119. In continuing the hearing, the court considered that the case was filed in 2014 and is very near completion.

Debtor's modified plan was set for a June 11, 2019 confirmation hearing. Motion, Dckt. 125. At that hearing, the court noted several procedural defects in the Motion and therefore denied the Motion without prejudice. Civil Minutes, Dckt. 139.

Given that this case was nearing completion, and there was a proposed modified plan to get the case back on track and avoid dismissal, it is hard to believe that this case and Motion were not on Debtor's counsel's mind. This makes Debtor's counsel's explanation that there was a calendaring error, counsel merely forgot there was any hearing, and counsel's employee was only trying to listen in on proceedings dubious.

At the hearing, xxxxxxxxxxxxxx.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Order to Show Cause is **XXXXXXXXX**.

19.	**14-28961-E-13 DPC-5**	**RODEL MAULINO AND MIMSY ABARA-MAULINO Mitchell Abdallah**	**CONTINUED MOTION TO DISMISS CASE 3-26-19 [112]**

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 26, 2019. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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 the debtor, Rodel Montevirgen Maulino and Mimsy Descallar Abara-Maulino ("Debtor"), is delinquent $6,335.36 in plan payments, which is multiple months of the $4,249.28 plan payment.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on April 10, 2019. Dckt. 116. Debtor states that $166,526.36 has been payed into the Plan since the case was filed in 2014. Debtor argues the payment delinquency was caused by the ongoing payment to the Class 1 secured loan of U.S. Bank, N.A., which increased from $2,138.83 in 2014 to $3,084.75 as of August 1, 2018. Debtor's Original Plan was set to increase the payment amount by $521.52 in month 50 (November, 2018) of the Plan. Due to the increase in the Class 1 secured loan payment, Debtor no longer has an excess of $521.52 to cover the increased Plan payment amount.

Debtor states a modified plan will be filed to address the delinquency by amending the Plan payment amount based on current income and expenses.

APRIL 24, 2019 HEARING

At the April 24, 2019 hearing, the Trustee reported that the delinquency has been reduced to

about $2,000.00 and the parties concurred that the hearing should be continued to allow a modified plan to be filed. Civil Minutes, Dckt. 119.

MYSTERIOUS TELEPHONIC APPEARANCE AT THE JUNE 19, 2019 HEARING

When the court called this matter at the June 16, 2019 hearing, a person appeared telephonically, stating that he was Mitch Abdallah, the Debtor's attorney. Civil Minutes, Dckt. 149. Counsel for the Trustee noted the voice on the phone, which was the voice of the same person stating he was Mitch Abdallah at the prior hearing, did not sound like Mr. Abdallah's voice.

The court concurred and requested that the person appearing telephonically identify himself. No response was received, there was a "click" sound, and the line went dead. CourtCall confirmed that the caller, who identified himself as Mitch Abdallah, had disconnected. CourtCall reported that the phone number which the person stating that he was Mitch Abdallah was calling from was 916-446-1974.

This number, 916-446-1974, is the phone number that Mitch Abdallah lists as his office phone number on his pleadings filed with the court. Motion, Dckt. 28. This is also the phone number that Mitch Abdallah lists for his office on his webpage. https://abdallahlawgroup.com/.

It appears that someone in Mitch Abdallah's office is making phone appearances, misrepresenting that he is Mitch Abdallah. This was done to mislead and deceive the court.

In light of this being a 2014 case, months short of completing the five year plan term, the Chapter 13 Trustee argued strongly with the court that the hearing should be continued to allow the Debtors and Mitch Abdallah a chance to save the 4+ years of toil.

The court, moved by the Trustee's argument, continued the hearing, leaving it to Mitch Abdallah to address the "disappearing voice" and the conduct of people calling the court from his office.

ORDER TO SHOW CAUSE

The court issued an Order to Show Cause ("OSC") on June 24, 2019. Dckt. 150. The Order set a hearing to consider the imposition for sanctions (in conjunction with the Motion To Dismiss) for July 16, 2019 and required a Response be filed on or before July 3, 2019, and Replies, if any, be filed on or before July 12, 2019. The Order further required that Mitchell Abdallah and every employee or person working at his law firm; whether an employee, independent contractor, person using or subleasing space; whether for salary, commission, in-kind compensation, or for no current compensation; and each of them, shall appear at the July 16, 2019 hearing–no telephonic appearances permitted.

The corrective sanctions under consideration are: (1) a $5,000.00 civil sanction to discourage such further false appearances; (2) suspending Mitchell Abdallah's telephonic appearance privileges for a period of two years; (3) Mitchell Abdallah paying the legal fees and costs for Debtors to obtain replacement counsel to represent them in this case and try to save it from dismissal; and (4) Mitchell Abdallah compensate the Debtors for any loss, cost, expense, and emotional distress if this bankruptcy case is dismissed and the Debtor's efforts for more than four years that were lost by the failure of representation in this case.

The court has addressed the Order to Show Cause, determining **xxxxxxxxxxxxxxx**

SECOND MODIFIED PLAN
AND MOTION TO CONFIRM

On June 17, 2019, a Second Modified Plan was filed in this case. Dckt. 147. It has typed signatures for the two debtors and Debtor's counsel, Mr. Abdallah. In light of the false telephonic appearances for Mr. Abdallah, one would question whether Second Amended Plan has been signed.

The Motion to Confirm the Second Modified Plan has been filed. Dckt. 144. The grounds stated with particularity in the Motion (Fed. R. Bankr. P. 9013) states that the monthly payments on the secured claim owed to US Bank National Association for the Debtor's residence has increased from $2,138.83 a month to $3,084.75. Motion ¶ 5; *Id.* No reason for this 44.2% increase in a monthly mortgage payment is stated. The Debtor then states that Debtor is not increasing the plan payments in month 50 of the plan by $521.52 because Debtor no longer has that extra amount to pay.

The Motion fails to state grounds sufficient for confirmation of a modified plan as required by 11 U.S.C. § 1329, § 1325, and § 1322. Rather, it is merely a short summary of the Debtor stating that the Debtor is not going to pay the additional amount.

No exhibits are provided, such as a notice of mortgage payment change or other evidence from the creditor that the mortgage payment has increased. A review of the file in this case discloses that no notice of mortgage payment change has been filed by this creditor.

It does not appear that the court has been presented with a motion that may be granted with respect to any modified plan to decrease the payments due from Debtor.

DECISION

At the hearing, xxxxxxxxxxxxxx.

~~Cause has been shown for dismissal of this case pursuant to 11 U.S.C. § 1307. 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.~~

FINAL RULINGS

20. **19-22412-E-13 MC-1** | **CHRISTOPHER/REBECCA BUDGE** Muoi Chea | **MOTION TO CONFIRM PLAN 6-4-19 [17]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on June 4, 2019. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtors, Christopher Cody Budge and Rebecca Lynn Budge ("Debtor"), have provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a statement of non-opposition on July 3, 2019. Dckt. 26. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

The Motion to Confirm the Chapter 13 Plan filed by the debtors, Christopher Cody Budge and Rebecca Lynn Budge ("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 Chapter 13 Plan filed on June 4, 2019, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to The Chapter 13 Trustee, David Cusick ("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.

21. 18-22133-E-13 RPK-2 | **DONAVAN HAN** | **Ryan Keenan** | **MOTION TO MODIFY PLAN** | **5-27-19 [48]**

DEBTOR DISMISSED: 05/31/2019

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

The case having previously been dismissed, the Motion is dismissed as moot.

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

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

The Motion To Confirm Modified Plan having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is dismissed as moot, the case having been dismissed.

22. **19-22653-E-13 PGM-3** | **REECE/RODINA VENTURA** | **Peter Macaluso** | **MOTION TO VALUE COLLATERAL OF EXETER FINANCE CORPORATION 6-8-19 [64]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on June 8, 2019. By the court's calculation, 38 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of Exeter Finance Corporation ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $14,500.00.

The Motion filed by the debtors, Reece and Rodina Ventura ("Debtor"), to value the secured claim of the creditor, Exeter Finance Corporation ("Creditor"), is accompanied by Debtor's declaration. Declaration, Dckt. 66. Debtor is the owner of a 2013 BMW 3 Series 535i ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $14,500.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

TRUSTEE'S RESPONSE

On July 1, 2019 the Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response to Debtor's Motion. Dckt. 107. The Trustee notes that Creditor is included in Class 2(B) of Debtor's

proposed Plan (Dckt. 2), with a claim in the amount of $26,532.64 and a value of $14,500.00, to be paid 5.50 percent interest with a monthly dividend of $278.00. Trustee notes further that Creditor filed a Proof of Claim stating a claim of $26,685.24, secured in the amount of $14,500.00.

CREDITOR'S PROOF OF CLAIM

Creditor filed Proof of Claim, No. 11 on May 27, 2019. The Claim asserts Creditor's claim is in the amount of $25,685.24, of which $14,500.00 is secured and $11,185.24 is unsecured.

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on January 14, 2016, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $25,685.24. Declaration, Dckt. 66 at 2:1-4. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of $14,500.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Value Collateral and Secured Claim filed by the debtors, Reece Ventura and Rodina Ventura ("Debtor"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of the creditor, Exeter Finance Corporation ("Creditor"), secured by an asset described as 2013 BMW 3 Series 535i ("Vehicle") is determined to be a secured claim in the amount of $26,685.24, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $14,500.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

23. **18-25962-E-13 BLG-1** **LEONARDO/FELY MERCURIO** **Chad Johnson** **MOTION TO CONFIRM PLAN** **6-4-19 [64]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 4, 2019. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtors, Leonardo Merced Mercurio and Fely Duyanan Mercurio ("Debtor"), have provided evidence in support of confirmation. David Cusick ("the Chapter 13 Trustee") filed a Response indicating non-opposition on June 24, 2019. Dckt. 80. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by Leonardo Merced Mercurio and Fely Duyanan Mercurio ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Debtor's Amended Chapter 13 Plan filed on June 4, 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.

24.	**19-22169-E-13** **DPC-2**	**ELENA PEREZ GONZALEZ** **Pro Se**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **6-18-19 [35]**

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

The case having previously been dismissed, the Objection is overruled as moot.

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

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

The Objection to Confirmation of Plan having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is overruled as moot, the case having been dismissed.

25. **19-22169-E-13 JCW-1** **ELENA PEREZ GONZALEZ** **Pro Se** **OBJECTION TO CONFIRMATION OF PLAN BY CITIBANK, N.A.** **5-29-19 [30]**

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

The case having previously been dismissed, the Objection is overruled as moot.

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

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

The Objection to Confirmation of Plan having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is overruled as moot, the case having been dismissed.

26. **19-20660-E-13** **DAVID MANNING** **MOTION TO CONFIRM PLAN**
PGM-1 **Peter Macaluso** **6-7-19 [57]**

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

Local Rule 9014-1(f)(1) Motion—Hearing Not Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 7, 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 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, David Manning ("Debtor"), seeks confirmation of the First Amended Plan. The Amended Plan provides for $750.00 to be paid through May 2019, and for plan payments of $2,000.00 for the remaining 57 months of the Plan. Amended Plan, Dckt. 61. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CREDITOR'S OPPOSITION

Creditor NewRex LLC holding a secured claim ("Creditor"), filed an Opposition on June 28, 2019. Dckt. 66. Creditor opposes confirmation on the following grounds:

A. The plan does not provide for payment of Creditor's arrears claim while Debtor seeks a loan modification.

B. The Plan states Debtor will file a new Amended Plan if the loan modification is denied. However, on March 26, 2019, Creditor sent a letter confirming to Debtor that he was not

eligible for a loan modification.

C. Since there is no loan modification the Amended Plan is not feasible.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on July 1, 2019. Dckt. 69. Trustee opposes confirmation on the following grounds:

A. Debtor is currently delinquent $2,000.00 in plan payments.

B. Debtor has an Ensminger provision in the plan, but does not provide analysis showing the proposed payment provides adequate protection to Shellpoint Mortgage.

DEBTOR'S REPLY

Debtor filed a Reply on July 8, 2019. Dckt. 72. Debtor's counsel argues the loan modification standards for eligibility are being hidden from Debtor, but represents that a Second Amended Plan will soon be filed to increase the payment from $2,000.00 to $2,600.00.

DISCUSSION

The Debtor has filed a Reply indicating a new plan will be filed, which the court interprets to be a statement of non-opposition.

Debtor is $2,000.00 delinquent in plan payments. Declaration, Dckt. 70. Furthermore, the plan relies on a pending loan modification which Creditor has indicated was denied. Exhibit A, Dckt. 67. Based on the foregoing, the Amended Plan does not appear feasible. 11 U.S.C. § 1325(a)(6).

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

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

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

27. **18-27149-E-13** **YVONNE ESCOBAR** **MOTION TO CONFIRM PLAN**
RS-1 **Richard Sturdevant** **6-4-19 [31]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 4, 2019. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Amended Plan is granted.

The debtor, Yvonne Escobar ("Debtor"), seeks confirmation of the First Amended Plan.

The Amended Plan provides for payments of $2,765.16 for 6 months, then $2,783.00 for the remaining 54 months, with a 1 percent dividend to unsecured claims totaling $27,157.09. Amended Plan, Dckt. 39. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on July 2, 2019. Dckt. 46.

DISCUSSION

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Yvonne Escobar ("Debtor"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and Debtor's Amended Chapter 13 Plan filed on June 4, 2019, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, Trustee will submit the proposed order to the court.

28. **19-23036-E-13** **SANJANI/VIKASH SINGH** **MOTION TO CONFIRM PLAN**
FF-2 **Gary Fraley** **6-11-19 [21]**

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

Local Rule 9014-1(f)(1) Motion—Hearing Not Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, parties requesting special notice, creditors, and Office of the United States Trustee on June 11, 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 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 hearing on the Motion to Confirm the Plan is continued to August 27, 2019 at 3:00 p.m. .

The debtors, Sanjani Singh and Vikash Singh ("Debtor"), seek confirmation of the Chapter 13 Plan. The Plan proposes monthly payments of $4,475.00 for 60 months, with a 0 percent dividend to unsecured claims totaling $53,986.77. Dckt. 24. 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 July 1, 2019. Dckt. 29. The Trustee notes initially that the Meeting of Creditors is July 11, 2019, only a few days before this hearing, which has limited his ability to assess the plan's confirmability.

Trustee further opposes confirmation of the Plan on the following grounds:

A. Schedule I lists a $250.00 payroll deduction for "advance,"

which is unexplained and totals $15,000.00 ver the plan terms.

B. Debtor is receiving contributions of $1,450.00 monthly. However, no evidence has been provided to show this contribution is reliable.

C. Debtor proposes to pay creditor Avid Acceptance holding a secured claim only $375.00 per month, where the contract provides for monthly payments of $503.09, plus 15.97 percent interest.

D. Debtor has not filed a motion to value the secured claim of Heritage Community Credit Union, which Debtor's Plan proposes to reduce in value to $9,750.00 from $21,042.77.

Trustee requests the court continue the hearing to August 27, 2019 at 3:00 p.m. to allow Trustee time to file a supplemental opposition.

DEBTOR'S RESPONSE

Debtor filed an untimely Response on July 10, 2019, 6 days before the hearing. Dckt. 42. Debtor states the following:

1. Debtor is providing a 100 percent dividend to unsecured claims in the proposed amended plan.

2. The proposed amount to Avid Acceptance (presumably in the amended plan) is for $375.00 a month at 5.25% interest which has been listed in Class 1of the plan.

3. Debtor filed the motion to value the secured claim of Heritage Community Credit Union on July 8, 2019.

4. Debtor's contribution is from Debtor's parent Savitri Devi. The contribution of $1,450.00 is nearly all of Debtor's $1,500.00 monthly income received from social security.

5. Debtor agrees to continue the hearing to August 27, 2019.

DISCUSSION

Both parties have requested the hearing be continued to allow further analysis of the confirmability of the Chapter 13 Plan. Therefore, the court shall continue the hearing on the Motion to August 27, 2019 at 3:00 p.m.

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, Sanjani and Vikash Singh ("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 hearing on the Motion to Confirm the Plan is continued to August 27, 2019 at 3:00 p.m.