UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

Notice
The court has reorganized the cases, placing all of the Final Rulings in the second part of these Posted Rulings, with the Final Rulings beginning with Item 19.

The court has also reorganized the items for which the tentative rulings are issued, Items 2–18, attempting to first address the items in which short argument is anticipated.

July 31, 2018, at 3:00 p.m.

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1. 17-27397-E-13 GEVORG/ARMINE POLADYAN — CONTINUED MOTION TO DISMISS ADVERSARY PROCEEDING
18-2014 PLC-2
TRIVEDI V. POLADYAN ET AL — 6-11-18 [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 Plaintiff's Attorney and Office of the United States Trustee on June 11, 2018. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss Adversary Proceeding has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4004(a). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Dismiss Adversary Proceeding is granted.

This Adversary Proceeding was commenced on February 14, 2018. It and the related bankruptcy case were transferred to the current judge on or about June 18, 2018.

Grevorg Poladyan and Armine Asatryan ("Defendant") move for the court to dismiss all claims against it in Tapan Trivedi's ("Plaintiff") Complaint according to Federal Rule of Civil Procedure 12(b)(6).

Defendant argues that this Adversary Proceeding is moot because Defendant's bankruptcy case was converted to Chapter 13 proposing a 100% plan.

REVIEW OF COMPLAINT

The Amended Complaint filed by Tapan Trivedi, as the Administrator for the Estate of Ortansa Ambrus-Cernat, the Plaintiff, asserts that the obligation owed by Debtor to Plaintiff is nondischargeable based on fraud, breach of fiduciary duty, and injury caused by willful and malicious conduct. The court summarizes the allegations in the Complaint as follows:

A. In Superior Court for Sacramento County Case No. 34-2015-00188010, Amended Complaint ¶ 1, Dckt. 31.

B. Defendant-Debtor Gevorg Poladyan filed an answer to the Complaint. *Id.* ¶ 3.

C. On August 8, 2008, Ortansa purchased the Palmwood Property at a shortsale from Defendant-Debtors for $180,000. *Id.*, ¶ 14. To finance the $180,000 purchase, it is alleged that Defendant-Debtors agreed that Ortansa would refinance her home to fund the short sale purchase. *Id.*, ¶ 24.

D. It is further alleged that "Defendants convinced Ortansa to borrow money on her home, purchase the Palmwood Property at foreclosure, transfer the Palmwood Property back to Defendants, and then refinance the home a [*sic*] repay the $180,000.00 to Ortansa to save Defendants' home." *Id.*, ¶ 26.

E Defendant-Debtors (collectively) purchased the "Palmwood Property" from Ortansa for $180,000 on April 30, 2011. *Id.*, ¶ 15.

F. Defendant-Debtor promised—

1. They would care for Ortansa's mentally challenged son;

2. They would refinance the Palmwood Property and "re-pay" Ortansa. *Id.* ¶¶ 16–18.

G. On February 2, 2012, Ortansa executed the grant deed to transfer the Palmwood Property to Defendant-Debtors. *Id.*, ¶ 19.

H. Defendant-Debtors signed a loan agreement for $100,000 with Outsourced Legal Support, LLC ("Outsourced") on October 1, 2012, and a second loan agreement for $80,000 with Outsourced on April 1, 2013. *Id.*, ¶¶ 20, 21. Defendant-Debtors encumbered the Palmwood Property with an additional $50,000 obligation. *Id.*, ¶ 29.

I. Defendant-Debtors did not, and it is alleged did not intend, to pay Ortansa the $180,000 purchase price. *Id.*, ¶ 28.

J. Ortansa died on May 20, 2014. *Id.*, ¶ 30.

K. On November 5, 2017, Outsource recorded the two deeds of trust for the $100,000 2012 loan and the $80,000 2013 loan. *Id.*, ¶ 36. Defendant-Debtors commenced their bankruptcy case on November 8, 2017 (three days later). *Id.* ¶ 34.

L. In the First Cause of Action, Plaintiff merely requests that the court issue Declaratory Relief that the obligations of Defendant-Debtors would be nondischargeable if such litigation were to be commenced sometime in the future. *Id.* ¶¶ 36-37.

M. In the Second Cause of Action, Plaintiff asserts that Defendant-Debtors' obligation to pay the $180,000 is nondischargeable because the statement that Defendant-Debtors would repay the loan was false when made, Defendant-Debtors having no such intention at that time. The Second Cause of Action includes additional allegations of:

1. "Ortansa refinanced the Oak Property, for approximately $180,000, which was used to purchase the Palmwood Property." *Id.* ¶ 47.

2. "Defendants referred to Ortansa as 'mama' and spent many hours with her." *Id.* ¶ 48.

3. "Defendants wrote and signed communication promising that they 'will pay the loan as soon as possible.'" *Id.* ¶ 51.

4. "Defendants had an 'Agreement to Transfer Funds' prepared on April 14, 2014, which defendant, Armina Astryan signed stating 'the proceeds from the refinanced loan on 2242 Palmwood Ct., Rancho Cordova, CA will be assigned during escrow process to payoff the loan on the property 6005 Oak Ave, Carmichael, CA.'" *Id.* ¶ 52.

5. "55. Defendants made a materially false promise as no payments were ever made." *Id.* ¶ 55. "Defendants refinanced the Palmwood property but did not repay the loan." *Id.* ¶ 56.

6. "Defendants did not disclose the two notes with Outsource totaling $180,000, to Pinnacle, nor in the loan application." *Id.* ¶ 60.

7. Defendants refinanced the Palmwood property and purchased In-N-Out Honda, an auto wrecking yard. *Id.* ¶ 61.

8. "Plaintiff reasonably relied on the repayment to Ortansa as the Palmwood property was not encumbered at the time Ortansa's loan was made. *Id.* ¶ 62.

9. "On August 22, 2018, Defendants conveyed two (2) Deeds of Trust, and a UCC-1 to Outsource." *Id.* ¶ 63.

M. In the Third Cause of Action, Plaintiff asserts that, in light of the terms of the sale to Defendant-Debtors including promises for the case of Ortansa's handicapped son, the obligation to pay the $180,000 is nondischargeable "for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny" pursuant to 11 U.S.C. § 523(a)(4). Additional allegations in for the Third Cause of Action include:

1. "Plaintiff holds claims arising from for fraud or defalcation while acting in a 'fiduciary capacity.'" *Id.* ¶ 67.

2. "Defendants had a close relationship with Ortansa." *Id.* ¶ 68.

3. "Defendants made promises to care for Ortansa's handicapped son after she died." *Id.* ¶ 69.

4. "Defendants spent many hours with Ortansa and took her to church on a regular basis." *Id.* ¶ 70.

N. In the Fourth Cause of Action, Plaintiff alleges that Defendant-Debtors are obligated to Ortana in the amount of $210,000 "by failing to make any payments, failing to care for Ortana's son resulting in his death, encumbering the property, causing willful and malicious injury to Ortana's estate" pursuant to 11 U.S.C. § 523(a)(6). Additional allegations relating to the alleged willful and malicious conduct include:

1. "Defendants' caused willful and malicious injury to Ortansa by failing to repay the money loaned." *Id.* ¶ 76.

O. In the Fifth Cause of Action, Plaintiff alleges that Defendant-Debtors transferred property of the bankruptcy estate with the intend to hinder, delay, or default a creditor or officer of the estate within one year of the bankruptcy case and they should be denied a discharge pursuant to 11 U.S.C. § 727(b)(2)(A). Additional allegations relating to the alleged objection to discharge include:

1. "Defendants, with intent to hinder, delay, or defraud a creditor or an officer of the estate charged with custody of property under this title, has transferred property of the debtor within one year before the date of filing their Chapter 7 case." *Id.* ¶ 79.

In Paragraph 6 of the Amended Complaint, Plaintiff alleges that there were transfers made to Outsource Legal Support, LLC within thirty days of the bankruptcy case being filed by Defendants. Paragraph 7 of the Amended Complaint identifies a second deed of trust to secure a $100,000 obligation, a third deed of trust to secure an $80,000 obligation, and a UCC-1 financing statement (securing an unidentified obligation) filed against Defendants' business and assets.

It is further alleged in Paragraph 20 of the Amended Complaint that the loan agreement for the $100,000 obligation was signed October 1, 2012 (citing to Exhibit 4, Dckt. 6), and in Paragraph 21, the loan agreement for the $80,000 obligation was signed April 1, 2013 (citing Exhibit 5. Dckt. 6).

In Paragraph 34, it is alleged that the two deeds of trust were recorded and that the UCC-1 statement was filed on November 5, 2017. (Defendants' bankruptcy case was field on November 8, 2017.)

P. In the Sixth Cause of Action, Plaintiff asserts that the 2017 transfer to Outsource was made within ninety days of the commencement of the bankruptcy case and may be avoided pursuant to 11 U.S.C. § 544.

Q. In the Seventh Cause of Action, Plaintiff asserts that the transfers to Outsouce are avoidable as preferences pursuant to 11 U.S.C. § 547.

APPLICABLE LAW

A complaint must provide more than labels and conclusions, or a formulaic recitation of a cause of action; it must plead factual allegations sufficient to raise more than a speculative right to relief. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Federal Rule of Civil Procedure 8, made applicable to this adversary proceeding by Federal Rule of Bankruptcy Procedure 7008, requires that complaints contain a short, plain statement of the claim showing entitlement to relief and a demand for the relief requested. FED. R. CIV. P. 8(a). As the Court held in *Twombly*, the pleading standard under Rule 8 does not require "detailed factual allegations," but it does demand more than an unadorned accusation or conclusion of a cause of action. 550 U.S. at 555.

> To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face. A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.

Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S. Ct. 1937, 1949, 173 L. Ed. 2d 868, 884 (2009) (citations and quotation marks omitted). Rule 8 also requires that allegations be "simple, concise, and direct." FED. R. CIV. P. 8(d)(1).

In ruling on a Rule 12(b)(6) motion to dismiss, the Court may consider "allegations contained in the pleadings, exhibits attached to the complaint, and matters properly subject to judicial notice." *Swartz v. KPMG LLP*, 476 F.3d 756, 763 (9th Cir. 2007). The court need not accept unreasonable inferences or conclusory deductions of fact cast in the form of factual allegations. *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). Nor is the court required to "accept legal conclusions cast in the form of factual allegations if those conclusions cannot be reasonably drawn from the facts alleged." *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754–55 (9th Cir. 1994).

A complaint may be dismissed as a matter of law for failure to state a claim for two reasons: either a lack of a cognizable legal theory, or insufficient facts under a cognizable legal theory. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988) (citation omitted).

PLAINTIFF'S OPPOSITION

Plaintiff filed an Opposition on June 25, 2018. Dckt. 46. Plaintiff argues that the Motion should be denied outright because it lacks any admissible evidence.

As to Rule 12(b)(6), Plaintiff argues that less specificity is required because Defendant has all of the necessary information to have full knowledge of promises made, evidenced by a chain of documents.

REVIEW OF MOTION

The Motion responds to the Complaint's claims with the following grounds:

A. Causes of action two, three, and four fail to meet the heightened standard of Federal Rule of Civil Procedure 9(b) for pleading fraud;

B. The first cause of action for declaratory relief that a claim has been discharged fails because the court has not entered a discharge in the Chapter 7 case;

C. The second cause of action does not identify a misrepresentation, the speaker, when and where statements were made, what documents contained representations, and how the representations are false or misleading;

D. The third cause of action fails because it is merely conclusory;

E. The fourth cause of action fails because it is merely conclusory;

F. The fifth cause of action fails because "[t]here are no subparts;"

G. The sixth cause of action does not state how Plaintiff was entitled to exercise the rights of a trustee, and the case was converted to Chapter 13, leaving avoidance powers with a debtor; and

H. The seventh cause of action fails because Plaintiff does not state how Plaintiff had the right to exercise powers under 11 U.S.C. § 547, and the case has been converted to Chapter 13, which vested avoidance power in the debtor.

DISCUSSION

In reviewing the docket in Defendant's open bankruptcy case, the court notes that no discharge has been entered. Plaintiff includes a confusing First Cause of Action seeking declaratory relief that Defendant's claim has been discharged in Defendant's bankruptcy case. Complaint ¶¶ 38 and 39; Dckt. 1. In the Opposition to the Motion, Plaintiff does not address this allegation and whether the reference to "Defendant's" claim is to be "Plaintiff's Claim." Such would appear logical, in that the Plaintiff is the creditor of Defendant, the debtor.

As counsel in this District well knows, a request for "declaratory relief" is a request for specific relief as authorized by Congress for potential future claims that could arise if the parties cannot obtain a judicial determination of their asserted conflicting rights. Declaratory relief is an equitable remedy distinctive in that it allows adjudication of rights and obligations on disputes regardless of whether claims for damages or injunction have arisen. *See* Declaratory Relief Act, 28 U.S.C. § 2201. FN.1. "In effect, it brings to the present a litigable controversy, which otherwise might only be tried in the future." *Societe de*

Conditionnement v. Hunter Eng. Co., Inc., 655 F.2d 938, 943 (9th Cir. 1981). The party seeking declaratory relief must show (1) an actual controversy and (2) a matter within federal court subject matter jurisdiction. *Calderon v. Ashmus*, 523 U.S. 740, 745 (1998). There is an implicit requirement that the actual controversy relate to a claim upon which relief can be granted. *Earnest v. Lowentritt*, 690 F.2d 1198, 1203 (5th Cir. 1982).

FN.1. 28 U.S.C. §2201,

> § 2201. Creation of remedy
>
> (a) In a case of actual controversy within its jurisdiction, except with respect to Federal taxes other than actions brought under section 7428 of the Internal Revenue Code of 1986, a proceeding under section 505 or 1146 of title 11, or in any civil action involving an antidumping or countervailing duty proceeding regarding a class or kind of merchandise of a free trade area country (as defined in section 516A(f)(10) of the Tariff Act of 1930), as determined by the administering authority, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.
>
> (b) For limitations on actions brought with respect to drug patents see section 505 or 512 of the Federal Food, Drug, and Cosmetic Act, or section 351 of the Public Health Service Act.

The court may only grant declaratory relief when there is an actual controversy within its jurisdiction. *Am. States Ins. Co. v. Kearns*, 15 F.3d 142, 143 (9th Cir. 1994). The controversy must be definite and concrete. *Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227, 240–41 (1937). However, it is a controversy in which the litigation may not yet require the award of damages. *Id.*

Plaintiff now asserts that because Defendant's related bankruptcy case has been converted to one under Chapter 13 and the Plan promises that unsecured claims will be paid in full, that has rendered the complaint "moot." Because the Complaint has been rendered "moot," then the court should stay the prosecution of the "moot" Complaint.

It appears that Plaintiff is using the word "moot" in an inaccurate way. As discussed in Moore's Federal Practice-Civil, § 101.93, when a matter is "moot," the party cannot receive and the court cannot issue any effective order or judgment for the rights that had been asserted.

Here, it appears that Plaintiff does not assert that the claims for nondischargeability have not been rendered moot, but only that in light of Defendant's now proposing to pay the claim in full through a Plan, judicial economy and party resources are best served if the Adversary Proceeding is stayed. If so, Plaintiff or the Parties jointly may make such a request by separate motion, not merely slipping it in an opposition.

With respect to the First Cause of Action, the court is unsure what relief to grant. On its face, Plaintiff appears to seek a determination (not mere declaratory relief) that the obligation owed to Plaintiff has been discharged. Such would normally be brought by the debtor as a motion for contempt for violation of the discharge injunction or by a creditor seeking a determination that the debt had not been discharged for specifically stated grounds.

It may be that Plaintiff may well have sought a "declaration" that the obligation owed to Plaintiff "would be in the future" nondischargeable if Plaintiff could provide the grounds for nondischargeability under 11 U.S.C. § 523(a)(2), (4), and (6). Such clearly is not a proper request for declaratory relief. If a creditor wants such a determination, the creditor must (even in a Chapter 13 case) timely file a complaint for determination that the debt is nondischargeable. 11 U.S.C. §§ 523(a), 1328(a)(2), (c); FED. R. BANKR. P. 4007.

In fact, the Second, Third, and Fourth Causes of Action seek relief pursuant to 11 U.S.C. § 523(a)(2), (4), and (6). Those matters are properly before the court for adjudication and are not rendered moot merely by the conversion of the case to one under Chapter 13 and a promise that Debtor will pay claims in full over sixty months of a Chapter 13 plan.

Therefore, the Motion is granted as to the First Cause of Action seeking declaratory relief. Plaintiff must, and has, sought determinations of nondischargeability in this Complaint. Plaintiff must seek such determination, and not merely a "declaration" by the court that if Plaintiff were to pursue such claims sometime in the future then it is possible that nondischargeable relief could possibly be granted.

Second Cause of Action

The Second Cause of Action seeks a determination of nondischargeability based on 11 U.S.C. § 523(a)(2) fraud. Paragraph 38 in the Second Cause of Action incorporates all of the prior allegations by reference. From that, it appears clear that the relief is sought pursuant to 11 U.S.C. § 523(a)(2)(A) fraud, not the alternative grounds based on a written financial statement as provided in § 523(a)(2)(B).

Contrary to Defendant's assertion that the allegations are not specific enough, such as not identifying the specific time or mode of statement, the Amended Complaint does provide adequate allegations. These include, which are identified by their paragraph numbers in the Amended Complaint (Dckt. 1, emphasis added):

> 14. On or about, August 8, 2008, Ortansa purchased the Palmwood Property at a short sale from Defendants for $180,000.00.
>
> 15. On or about April 30, 2011, Ortansa sold the Palmwood Property to Defendants for $180,000.
>
> 16. Defendants promised that they would care for her mentally challenged adult son.
>
> 17. Defendants promised that they would refinance the Palmwood property for and repay Ortansa.

18. Defendants promised to care to Ortansa's disabled son when she died.

19. On or about, February 2, 2012 Ortansa signed a grant deed to Defendants.

Exhibit 3 is a copy of a Grant Deed bearing the recording date of February 2, 2012. It is hand written and does not appear to have been prepared by an escrow or other real estate professional service agency. It states that Plaintiff transferred the Property to Defendant Armine Asatryan and that no transfer taxes are due because the transfer was for "no consideration."

There are specific representations asserted to have been made by Plaintiff, not merely a statement akin to "Defendant lied to me" or "Defendant did not do what was (nonspecifically stated) what he promised."

Plaintiff states that she fulfilled her part of the above agreement and that title was transferred to Defendants.

20. On October 1, 2012, Defendants signed a Loan Agreement, in the amount of $100,000.00, with Outsourced legal Support, LLC. ("Outsourced"). See Exhibit #4.

21. On April 1, 2013, Defendants signed a Loan Agreement in the amount of $80,000.00 with Outsourced. (See Exhibit #5).

Plaintiff specifically identifies the post-sale loans that were obtained by Defendants that conflict with the alleged contract terms to obtain $180,000 by refinancing the property to pay Plaintiff. Then, Plaintiff goes further in Paragraph 81 of the Complaint to allege that Defendant's transfer to Outsource was for an antecedent debt for which they encumbered the property to pay the old debt ahead of doing the alleged required refinance to pay Plaintiff.

26. Defendants convinced Ortansa to borrow money on her home, purchase the Palmwood Property at foreclosure, transfer the Palmwood Property back to Defendants, and then refinance the home and repay the $180,000.00 to Ortansa to save Defendants' home.

27. As agreed Ortansa purchased the Palmwood Property for $180,000.00, as stated in the State Action, with the agreement that Defendants would care for Ortansa's disabled adult son after her death.

Plaintiff clearly asserts that Defendants "convinced" Plaintiff to borrow the money, did not comply with the alleged agreement, and that the terms of the agreement included the (nonspecific) provision to "care" for Plaintiff's adult son.

28. Defendants did not repay the loan from Ortansa, nor did Defendants have the intent to repay the loan when the agreement was formed.

29. Defendants intentionally encumbered the Palmwood Property with a $50,000.00 loan, but did not pay Ortansa.

32. No payments were made to Ortansa's estate.

Defendant asserts that the above are mere "conclusory allegations of fraud . . . punctuated by a handful of neutral facts" that to be sufficient, the Complaint must state why such statements were fraudulent. As stated in one of the authorities cited by Defendant:

> "Rule 9(b) ensures that allegations of fraud are specific enough to give defendants notice of the particular misconduct which is alleged to constitute the fraud charged so that they can defend against the charge and not just deny that they have done anything wrong. *See Bosse v. Crowell Collier & Macmillan*, 565 F.2d 602, 611 (9th Cir. 1977)."

Semegen v. Weidner, 780 F.3d 727, 731 (9th Cir. 1985).

Here, Plaintiff has specifically identified the alleged particular misconduct, the alleged promises, the failure to comply, the reliance of Ortansa, and the damages. While Defendants will want to conduct discovery to obtain all documents and witnesses, they know exactly the alleged fraud, when it is alleged to have occurred, and the nature of the damages alleged to flow from it.

As discussed in 2 Moore's Federal Practice—Civil § 9.03(b), the above adequately meets the requirements of Federal Rule of Civil Procedure 9 and Federal Rule of Bankruptcy Procedure 7009 [specifics for the Complaint shown in brackets]:

> [b] Requirements of Particularity Depend on Facts of Case
>
> The requirements of particularity under Rule 9(b) may differ with the facts of each case. However, the reference to "circumstances constituting fraud" usually requires the claimant to allege:
>
> •The identity of the person who made the fraudulent statement;
> [Defendants Gevorg Polandyan and Armine Asatrayn]
>
> •The time of the misrepresentation;
> [April 30, 2011, February 2, 2012]
>
> •The place of the misrepresentation;
> [communications directly with Ortansa]
>
> •The content of the misrepresentation;
> [promise to refinance and pay $180,000, and provide care for disabled son]
>
> •The method by which the misrepresentation was communicated;

> [in light of there being no written agreement it appears to have been orally communicated]
>
> •The persons or entities to whom the misrepresentation was communicated; [Ortansa]; and
>
> •The injury resulting from reliance on the misrepresentation. [$180,000, damages flowing from being unable to repay loan obtained by Ortansa, and care of disabled son].
>
> **Nevertheless, plaintiffs are not absolutely required to plead the specific date, place, or time of each of the fraudulent acts, provided they use some alternative means of injecting precision and some measure of substantiation into their allegations of fraud**.
> . . .
> Because the complexity and other circumstances of each case **will determine the amount of specificity required, misrepresentations that are numerous and occur over extended periods of time may be alleged with somewhat less specificity.** In such cases, it would be impractical to detail every instance of fraudulent conduct. A complaint may be sufficient if it pleads a fraudulent scheme with particularity along with representative examples showing fraudulent conduct**. Moreover, Rule 9 must be read together with Rule 8, which requires that pleadings be "simple, concise, and direct**." Excessive pleading of multiple instances of fraud might violate Rule 8.

Moore's on Federal Practice continues in Section 903(c) discussing "conclusory allegations," providing the following guidance:

> For example, in a claim by employees and their wives against an employer for damages from alleged exposure to dangerous chemicals, allegations that defendants "actively practiced fraud upon the plaintiffs" by failing to warn them about the dangers of contamination were deemed insufficient.

Here, the allegations provided for Defendants are not mere conclusory statements, but what the specific fraud is alleged to be, who made the alleged misrepresentations, that Plaintiff relied, that Defendants did not intend to fulfill the alleged promises, and that Ortansa was damaged.

The Motion is denied as to the Second Cause of Action.

Third Cause of Action—11 U.S.C. § 523(a)(4)

Based on the above allegations, Plaintiff also seeks to have the obligation determined nondischargeable based on 11 U.S.C. § 523(a)(4) which provides that a debt will be nondischargeable if it is"for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny." It is alleged in Paragraph 46 of the Complaint that the allegations constitute such a claim because:

68. Defendants had a close relationship with Ortansa.

69. Defendants made promises to care for Ortansa's handicapped son after she died.

70. Defendants spent many hours with Ortansa and took her to church on a regular basis.

Defendants assert that the allegations of there being a fiduciary relationship is based on contentions that Defendants "[h]ad a close relationship with [Ortansa] and took her to church on a regular basis."

The court concurs that as pleaded in the Amended Complaint, Plaintiff does not state (even construing the allegations as most favorably to Plaintiff) a cognizable fiduciary relationship between Ortansa and Defendants. A relationship, yes. But having a close relationship, including attending church may show a situation of undue influence or explain why Plaintiff's reliance is justifiable, it is not a fiduciary relationship. As discussed in *Blyler v. Hemmeter* (*In re Hemmeter*), 242 F.3d 1186 (9th Cir. 2001):

> Whether a person is a fiduciary under §523(a)(4) is a question of federal law. *Lewis v. Scott* (*In re Lewis*), 97 F.3d 1182, 1185 (9th Cir. 1996) (citing *Ragsdale v. Haller (In re Haller)*, 780 F.2d 794, 795 (9th Cir. 1986)). . . From 1884 to the present, courts have construed "fiduciary" in the bankruptcy discharge context as including express trusts, but excluding trusts ex maleficio, i.e., trusts that arose by operation of law upon a wrongful act. *Davis v. Aetna Corp.*, 293 U.S. 328, 333, 79 L. Ed. 393, 55 S. Ct. 151 (1934); *Chapman v. Forsyth*, 43 U.S. 202, 2 HOW 202, 208, 11 L. Ed. 236 (1844). We have adhered to this construction in interpreting the scope of 11 U.S.C. §523(a)(4), refusing to deny discharge to those whose fiduciary duties were established by constructive, resulting and implied trusts. *Runnion v. Pedrazzini* (*In re Padrazzini*), 644 F.2d 756, 758 (9th Cir. 1981); *Schlecht v. Thornton* (*In re Thornton*), 544 F.2d 1005, 1007 (9th Cir. 1976)." The core requirements are that the relationship exhibit characteristics of the traditional trust relationship, and that the fiduciary duties be created before the act of wrongdoing and not as a result of the act of wrongdoing." *Runnion*, 644 F.2d at 758. Fiduciary relationships imposed by statute may cause the debtor to be considered a fiduciary under §523(a)(4). *Quaif v. Johnson*, 4 F.3d 950, 953-54 (11th Cir. 1993); *Runnion*, 644 F.2d at 758 n. 2. In general, a statutory fiduciary is considered a fiduciary for the purposes of §523(a)(4) if the statute: (1) defines the trust res; (2) identifies the fiduciary's fund management duties; and (3) imposes obligations on the fiduciary prior to the alleged wrongdoing. Cf. *Windsor v. Librandi*, 183 B.R. 379, 383 (M. D. Pa. 1995) (discussing whether a fiduciary under state securities act qualifies as a fiduciary under §523). See also *Runnion*, 644 F.2d at 759. . .

The court grants the Motion as to the Third Cause of Action, dismissing it without prejudice. The court cannot find allegations of the fiduciary (whether contractual, statutory, or common law) relationship.

Though without prejudice, this does not kick off a never ending series of further amended complaints. While without prejudice, Plaintiff will have to file a motion for leave to file a further amended complaint, for which the court requires a copy of the proposed further amended complaint to be included as an exhibit to such motion.

Fourth Cause of Action—11 U.S.C. § 523(a)(6)

The Fourth Cause of Action alleges that based on the allegations in the Amended Complaint the obligation is nondischargeable because the injury was caused by the willful and malicious conduct of Defendants. The basis of the present Motion to Dismiss is that there are mere "threadbare and conclusory" allegations. That is incorrect, the allegations of the conduct are specific and concrete (that does not mean that they are provable and if so, whether they constitute willful and malicious conduct, but that is not before the court this day).

The Motion is denied as to the Fourth Cause of Action.

Fifth Cause of Action—11 U.S.C. § 727(a)(2)(A) [Clerical Error Identifying it as § 727(b)(2)(B)]

The Fifth Cause of Action asserts that the transfers made to Outsource on the eve of bankruptcy were with the "intent to hinder, delay, or defraud a creditor or an officer of the estate charged with custody of property under this title, . . . within one year before the date of filing their Chapter 7 case." *Id.* ¶ 79.

Plaintiff alleges specific transfers, being done on the eve of bankruptcy, which appear to be made in contemplation of the bankruptcy case being filed. As addressed in the Sixth and Seventh Causes of Action, the Bankruptcy Code provides for the recovery of such preferences and fraudulent conveyance for the benefit of the bankruptcy estate. 11 U.S.C. § 544, 547, 548, 551.

In the Motion to Dismiss, Defendants quote 11 U.S.C. § 727(b), which is the provision referenced in the title to the Sixth Cause of Action. That section is clearly inapplicable to the allegations in the Fifth Cause of Action.

However, reading the Fifth Cause of Action is clear to any experienced bankruptcy attorney (such as Defendants' attorney) that the reference is to 11 U.S.C. § 727(a)(2)(A) [emphasis added]:

> 11 U.S.C. § 727
>
> (a) The **court shall grant the debtor a discharge, unless**—
>
> (1) the debtor is not an individual;
>
> (2) the **debtor, with intent to hinder, delay, or defraud a creditor or an officer of the estate charged with custody of property under this title**, has transferred, removed, destroyed, mutilated, or concealed, or has permitted to be transferred, removed, destroyed, mutilated, or concealed—

> (A) property of the debtor, within one year before the date of the filing of the petition; or
>
> (B) property of the estate, after the date of the filing of the petition;

The court is confident that Defendants understand and that their counsel can respond to the allegations for objecting to Defendants' discharge as provided under 11 U.S.C. § 727(a)(2). The only basis in the Motion to Dismiss is that the clerical error in referencing 11 U.S.C. § 727 renders that claim insufficient.

The Motion to Dismiss the Fifth Cause of Action is denied.

Sixth and Seventh Causes of Action

Plaintiff, asserting a claim against Defendants, seeks to avoid transfers made by Defendants to Outsource as permitted by 11 U.S.C. § 544 and § 547. As stated by Defendants in the Motion to Dismiss, those provisions give the power to avoid such transfers to the bankruptcy trustee, or the debtor in possession in Chapter 11 and Chapter 12 cases, and the **debtor in Chapter 13 cases**. In cases when a trustee, debtor in possession, or Chapter 13 debtor fail to exercise such powers and a creditor can show the court that it appears such powers should be exercised, the court can authorize the creditor to exercise such powers and rights for the benefit of the bankruptcy estate. *See* 11 U.S.C. § 551.

Here, there are no allegations that the court has so authorized Plaintiff to exercise the powers of the trustee or that in Defendant's bankruptcy case, Defendants as Chapter 13 Debtors (11 U.S.C. § 1303, *Houston v. Eiler (In re Cohen)*, 305 B.R. 886 (B.A.P. 9th Cir. 2004)) have that power, and being the fiduciaries of assets of the estate have the obligation to pursue recovery for the benefit of the estate avoidable transfers.

This case having been filed in November 2017, the two-year statute of limitations under 11 U.S.C. § 546 has not expired. How Defendants include the exercise of this power and recovery of the property transferred for the benefit of the estate will weigh on whether Defendants can fulfill their obligations and prosecute the case in good faith, or whether it will have to be reconverted to one under Chapter 7.

The court grants the Motion to Dismiss for the Sixth and Seventh Causes of Action without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss Adversary Proceeding filed by Grevorg Poladyan and Armine Asatryan ("Defendant") 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 denied as to the Second, Fourth, and Fifth Causes of Action.

IT IS FURTHER ORDER that the Motion is granted, and the First Cause of Action is dismissed without leave to amend.

IT IS FURTHER ORDERED that the Motion is granted, and the Third, Sixth, and Seventh Causes of Action are dismissed without prejudice. Plaintiff may seek leave to amend by noticed motion filed with the court, for which a copy of the proposed further amended complaint is filed as an exhibit in support of such motion.

The dismissal of the Sixth and Seventh Causes of action, in addition to seeking a future amendment, is without prejudice to Plaintiff filing a separate complaint after obtaining leave from the court, those causes of action not being of the same nucleus of facts upon which the nondischargeable claims being based and such claims, if permitted, being brought as a representative of the bankruptcy estate and not as an individual creditor seeking the 11 U.S.C. § 727(a)(2)(A) relief in this Complaint.

IT IS FURTHER ORDERED that Defendants Armine Asatryan and Gevorg Poladyan, and each of them, shall file an answer to the Amended Complaint for the Second, Fourth, and Fifth Causes of Action on or before **August 22, 2018.**

2. 17-20494-E-13 THOMAS/COZETTE CRAVENS MOTION TO MODIFY PLAN
SDB-4 Scott de Bie 6-15-18 [55]

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 June 15, 2018. By the court's calculation, 46 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

Thomas Cravens and Cozette Cravens ("Debtor") seek confirmation of the Modified Plan because Debtor's income changed after a job layoff. Dckt. 59. The Modified Plan proposes that $39,870.00 be paid through May 2018 and that plan payments be $110.00 for six months beginning June 2018 and followed by $1,945.00 per month beginning December 2018. Dckt. 56. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE' OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on July 17, 2018. Dckt. 62. The Chapter 13 Trustee argues that the Modified Plan does not include Wells Fargo Home Mortgage, whose claim is provided for in Class 4 of the confirmed plan.

CREDITOR'S OPPOSITION

Wells Fargo Bank, N.A., ("Creditor") filed an Opposition on July 17, 2018. Dckt. 65. Creditor argues that the Modified Plan does not provide for ongoing monthly post-petition payments on its claim.

DEBTOR'S REPLIES

Debtor filed two Replies on July 18, 2018. Dckt. 67, 69. In both, Debtor states that omitting Creditor's claim from Class 4 was a clerical error, and Debtor proposes amending the Modified Plan to include Creditor's claim in Class 4.

RULING

The Modified Plan, as amended to include Creditor's claim in Class 4, 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 Thomas Cravens and Cozette 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 the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on June 15, 2018, as amended to include Wells Fargo Bank, N.A., in Class 4, 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.

3.	**16-25007-E-13 BLG-1**	**WILLIE MORRIS AND MONICA TATNEY-MORRIS Chad Johnson**	**CONTINUED MOTION TO BORROW 7-3-18 [20]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on July 3, 2018. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The Motion to Incur Debt is denied without prejudice.

Willie Morris and Monica Tatney-Morris ("Debtor") seek permission to purchase an undisclosed vehicle. A review of the attached exhibit shows that it is for a 2017 Nissan Versa with a total purchase price of $30,835.44 and monthly payments of $428.27 over seventy-two months with a 16.70 % fixed interest rate.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on July 10, 2018. Dckt. 25. He notes that the Motion omits details such as the type of vehicle being purchased and an explanation that it is to replace a vehicle that stopped operating. He notes that the deal terms are in the attached exhibit. He also notes that Debtor has not addressed whether the vehicle has been purchased already and whether this motion is for retroactive approval of the purchase.

Second, he argues that without amending the schedules, Debtor does not appear to be able to make the payments of $428.27 while also prosecuting this plan. Finally, the Chapter 13 Trustee is unsure whether the requested relief is in the best interest of the Estate because Debtor has not described whether

the prior vehicle could be repaired or what methods were employed to get a used vehicle with a reasonable interest rate.

DEBTOR'S RESPONSE

Debtor filed a Response on July 11, 2018. Dckt. 28. Debtor states that supplemental declarations have been filed to explain away the Chapter 13 Trustee's concerns, and it includes mention that a modified plan with supporting supplemental schedules will be filed and set for hearing.

The Supplemental Declaration states that the purchase contract has not been signed yet, that the prior truck was breaking down constantly, and that they reviewed online companies that work with bankruptcy debtors to select a vehicle.

JULY 17, 2018 HEARING

At the hearing, Debtor requested that the matter continued, and the court continued the hearing to 3:00 p.m. on July 31, 2018. Dckt. 38..

DISCUSSION

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

Debtor does not address the reasonableness of incurring debt to purchase a brand new vehicle while seeking the extraordinary relief under Chapter 13 to discharge debts. Debtor claims that one of their current vehicles has stopped working while they need two vehicles to commute to work. According to the vehicle contract, Debtor received $500 for trading in their 2001 Dodge Durango. Dckt. 23. Debtor seeks to pay $30,335.44 to purchase a $18,141.34 vehicle.

Here, the transaction is not in the best interest of Debtor. The loan calls for a substantial interest charge—16.7%. Moreover, it is unclear to the court how in good faith Debtor could propose to purchase a new car when paying holders of unsecured claims $0.00. A debtor driven to seek the extraordinary relief available under the Bankruptcy Code is hard pressed to provide a good faith explanation as to how a "reward" for filing bankruptcy is to purchase a new car and attempt to borrow money at a 16.7% interest rate.

The Motion is denied without prejudice.

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

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

The Motion to Incur Debt filed by Willie Morris and Monica Tatney-Morris ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice.

4. **18-23207-E-13 DPC-1** | **YEVGENIY ZHILOVSKIY** **Pro Se** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 7-2-18 [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 Objection. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor (*pro se*) on July 2, 2018. By the court's calculation, 29 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. Yevgeniy Zhilovskiy ("Debtor") failed to appear and be examined at the First Meeting of Creditors held on June 28, 2018.

B. Debtor has not made any plan payments.

C. Debtor failed to provide the Chapter 13 Trustee with tax returns.

D. Debtor failed to provide the Chapter 13 Trustee with pay advices.

E. Debtor failed to provide the Chapter 13 Trustee with the Class 1Checklist and Authorization to Release Information forms.

F. Debtor used the wrong plan form.

G. Debtor failed to list prior bankruptcy cases.

H. It is unclear if Debtor is married, and Debtor failed to file a Spousal Waiver for use of California State Exemptions under the California Code of Civil Procedure § 703.140.

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

The Chapter 13 Trustee asserts that Debtor is $110.00 delinquent in plan payments, which represents one month of the $110.00 plan payment. Before the hearing, another plan payment will be due. According to the Chapter 13 Trustee, the Plan in § 1.01 calls for payments to be received by the Chapter 13 Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Debtor has not provided the Chapter 13 Trustee with employer payment advices for the sixty-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv); FED. R. BANKR. P. 4002(b)(2)(A). Also, the Chapter 13 Trustee argues that Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A)(i); FED. R. BANKR. P. 4002(b)(3). Debtor has failed to provide all necessary pay stubs and has failed to provide the tax transcript. Those are independent grounds to deny confirmation. 11 U.S.C. § 1325(a)(1).

Debtor has failed to provide the Chapter 13 Trustee with the Class 1 Checklist and Authorization to Release Information forms as required by Local Bankruptcy Rules 3015-1(b)(6).

The Chapter 13 Trustee argues that the Plan is based upon a plan form that is no longer effective now that the court has adopted a new plan form as of December 1, 2017. The Plan is based on a prior plan form, which is a violation of Federal Rule of Bankruptcy Procedure 3015.1 and General Order 17-03.

The Chapter 13 Trustee reports that Debtor failed to disclose prior bankruptcy cases (Case No. 11-31336, filed on May 6, 2011; Case 11-44128, filed on October 7, 2011; Case 13-29153, filed on July 10, 2013) on the petition. Debtor was required to report any bankruptcy cases filed within the prior eight years. Debtor did not report any prior bankruptcy cases.

The Chapter 13 Trustee argues that it is unclear if Debtor is married. The Plan does not pay unsecured claims what they would receive in the event of a Chapter 7 case. 11 U.S.C. § 1325(a)(4). Debtor is proposing a 0% dividend to unsecured claims. Dckt. 15. Form 122C-1 lists Debtor's marital status as not married. Dckt. 14. However, Schedule J lists Debtor's wife as his dependent. Dckt. 13. Debtor's spouse is not included in the bankruptcy. Debtor has failed to file a Spousal Waiver for use of the California State Exemptions under the California Code of Civil Procedure California Code of Civil Procedure § 703.140.

The court notes that an amended plan was filed on July 19, 2018. That plan has not been served on any parties, however, and it has not been set for a confirmation hearing.

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

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

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

5. 18-20914-E-13 OZNIESHA WILLIAMS MOTION TO CONFIRM PLAN
EWV-170 Eric Vandermey 6-11-18 [27]

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 11, 2018. By the court's calculation, 50 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 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 Modified Plan is denied.

Oznieshia Williams ("Debtor") seeks confirmation of the Amended Plan to remove an unsecured claim for Check-n-Go. Addtionally, since filing the original plan, Debtor has filed and processed her 2017 Tax Returns, which she states have been provided to David Cusick ("the Chapter 13 Trustee"). Dckt. 29. The Amended Plan provides for a monthly payment of $3,552.00 and will pay unsecured claims a 100% dividend. Dckt. 31. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee filed an Opposition on July 12, 2018. Dckt. 36. He argues that Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Chapter 13 Trustee, the Plan will complete in seventy-three months unless the monthly payment to Wells Fargo for pre-petition arrears is increased from $953.50 to $1,075.60. Dckt. 36. For the Plan to complete in sixty months, the monthly payment must be $3,774.21. Dckt. 37. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

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

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

The Chapter 13 Trustee reports that Debtor has a history of receiving large tax refunds, and they have not been proposed to be provided to the Plan.

The Chapter 13 Trustee objects that the Motion was not properly noticed to three creditors who filed claims. Claims 1, 2 and 4. Three claimants—Discover Bank ,Capital One Bank, and Cerastes ("Check-n-Go")—were not served. Dckt. 32. Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 9014-1(f)(1) require that all creditors be served.

Amended Schedules I and J were submitted on June 11, 2018, as exhibits associated with the Motion to Confirm First Amended Chapter 13 Plan. Dckt. 30. Schedules need to be filed as separate documents so that they are actually filed as amended schedules and not merely an exhibit for an isolated matter.

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

6. **18-23320-E-13 AP-1** **SUZANNE CHUNG** **Jasmin Nguyen** **OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A. 7-5-18 [14]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on July 5, 2018. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

Wells Fargo Bank, N.A. ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that Suzanne Chung's ("Debtor") Plan does not cure pre-petition arrears on Creditor's claim.

Creditor's objection is well-taken. Creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts $1,071.49 in pre-petition arrearages. Proof of Claim 4-1. The Plan does not propose to cure those arrearages. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearages.

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

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

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

The Objection to the Chapter 13 Plan filed by Wells Fargo Bank, N.A. ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

7.	**18-24438-E-13** **PSB-1**	**JAMES CASEY** **Pauldeep Bains**	**MOTION TO IMPOSE AUTOMATIC STAY** **7-17-18 [8]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on July 17, 2018. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The Motion to Impose the Automatic Stay is granted.

James Casey ("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. 18-23216 and 18-24016) were

dismissed on June 11, 2018, and July 16, 2018, respectively. *See* Order, Bankr. E.D. Cal. No. 18-23216, Dckt. 10, June 11, 2018; Order, Bankr. E.D. Cal. No. 18-24016, Dckt. 10, July 16, 2018. Therefore, pursuant to 11 U.S.C. § 362(c)(4)(A)(i), the provisions of the automatic stay did not go into effect upon Debtor filing the instant case.

Here, Debtor states that the instant case was filed in good faith and explains that the previous cases were dismissed because Debtor failed to file all necessary documents timely. Dckt. 10. Debtor points out that his previous cases were filed in *pro se*. *Id*. Now, Debtor is represented by counsel and states that he has provided all of the necessary documents to his counsel.

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on July 23, 2018. Dckt. 13. The Chapter 13 Trustee states that he does not oppose the Motion.

DISCUSSION

Upon motion of a party in interest and after notice and hearing, the court may order the provisions imposed if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(4)(B). The subsequently filed case is presumed to be filed in bad faith if two or more of Debtor's cases were both pending within the year preceding filing of the instant case. *Id.* § 362(c)(4)(D)(i)(I). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* § 362(c)(4)(D).

Both of Debtor's prior cases were dismissed after Debtor failed to file all of the necessary documentation required by a Chapter 13 filing. (Nos. 18-23216 and 18-24016). Debtor has retained the services of an experienced bankruptcy attorney in the instant case. Debtor has filed a declaration stating that the filing includes all required documents. Debtor has filed required schedules in support of funding a Chapter 13 plan. *See* Dckt. 1.

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

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Impose the Automatic Stay filed by James Casey ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and the automatic stay is imposed pursuant to 11 U.S.C. § 362(c)(4)(B) for all purposes and parties, unless terminated by operation of law or further order of this court.

8. **18-20143-E-13 SLE-1** | **LAURO/DANELLE AVILA** **Steele Lanphier** | **CONTINUED AMENDED MOTION TO CONFIRM PLAN** **5-18-18 [39]**

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—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 17, 2018. By the court's calculation, 61 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 without prejudice.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Lauro Avila and Lucille Avila ("Debtor") have provided evidence in support of confirmation. No opposition to the Motion has been filed by David Cusick ("the Chapter 13 Trustee") or by creditors.

The court notes that the Amended Plan relies upon the court valuing two related motions to value. *See* Dckt. 48, 60. One was set for hearing on July 17, 2018, and another was set for hearing at 2:00 p.m. on July 31, 2018. *See* Dckt. 49, 61. The court cannot determine if the Amended Plan is feasible until it rules on both of those motions.

At the July 17, 2018 hearing, the court granted one of the motions to value, but the second motion to value was never properly set for hearing on July 31, 2018. Debtor set the motion for hearing at 2:00 p.m., but that is not an available time for hearing.

For the second motion, the court notified Debtor that it was set for an erroneous time, not a law and motion calendar of this Department. Notice, Dckt. 64. It further advised Debtor that an amended notice of hearing was required. *Id.*

Debtor has not filed such an amended notice and has not set a hearing on the second Motion to Value.

Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

The Motion is denied without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by Lauro Avila and Lucille Avila ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied without prejudice.

9. **18-24149-E-13 MET-1** | **DESHAUNNA PAYNE** **Mary Ellen Terranella** | **MOTION TO VALUE COLLATERAL OF GLOBAL LENDING SERVICES 7-16-18 [12]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on July 16, 2018. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of Global Lending Services ("Creditor") is denied.

The Motion filed by Deshaunna Payne ("Debtor") to value the secured claim of Global Lending Services LLC ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2014 Dodge Avenger ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $10,450.00 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).

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on July 17, 2018. Dckt. 16. The Chapter 13 Trustee asserts that the Vehicle is reported on Schedule A/B and D with a claim amount of $16,644.00 and a value of $10,450.00. He notes that the claim is listed in Class 2B as non-purchase money security interest, receiving a monthly dividend of $196.00 and 5.00% interest.

RULING

Creditor has not filed any response to the Motion, but Creditor did filed Proof of Claim 1-1 on July 23, 2018. An attachment to that Proof of Claim is the Retail Installment Sale Contract for the Vehicle. That contract indicates that the Vehicle was purchased with financing at an annual interest rate of 27.95%.

The lien on the Vehicle's title secures a purchase-money loan incurred in July 5, 2016, which is fewer than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $15,125.92. The provisions of 11 U.S.C. § 1325(a) prohibit valuation of vehicles purchased within 910 days of the petition date when the creditor holds a purchase money security interest.

Here, the purchase money lien was obtained within the 910-day period. As directed by the Supreme Court, a federal judge is to grant relief that is warranted based on the evidence and the law. *See United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260 (2010); *see also Varela v. Dynamic Brokers, Inc. (In re Dynamic Brokers, Inc.)*, 293 B.R. 489, 499 (B.A.P. 9th Cir. 2003) (citing *Everett v. Perez (In re Perez)*, 30 F.3d 1209, 1213 (9th Cir. 1994)).

The secured claim may not be valued. 11 U.S.C. § 1325(a). 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 Value Collateral and Secured Claim filed by Deshaunna Payne ("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.

10. **18-24364-E-13** **CLYDE HUGHES** **MOTION TO EXTEND AUTOMATIC STAY**
MS-1 **Mark Shmorgon** **7-16-18 [8]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on July 16, 2018. By the court's calculation, 15 days' notice was provided. 28 days' notice is required.

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

The Motion to Extend the Automatic Stay is granted.

Clyde Hughes ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 15-26834) was dismissed on February 7, 2018, after Debtor failed to make plan payments. *See* Order, Bankr. E.D. Cal. No. 15-26834, Dckt. 92, February 7, 2018. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because he incurred unexpected household expenses and was unable to effectively communicate with his prior counsel to file a timely modified plan. Debtor states in his Declaration that he now has a full time care taker who will be compensated through In Home Support Services program and will be able to use the worker's earnings to contribute to any unexpected future household expenses. Dckt. 10.

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on July 23, 2018. Dckt. 17. The Chpater13 Trustee states that he does not oppose the Motion.

RULING

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

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

A. Why was the previous plan filed?

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

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

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

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

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

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

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

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

11. 18-21469-E-13 DONNA WELCH — MOTION TO CONFIRM PLAN
DEF-3 David Foyil — 6-1-18 [71]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 1, 2018. By the court's calculation, 60 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~~.

Donna Welch ("Debtor") seeks confirmation of the Second Amended Plan because the First Amended Plan was denied and because changes have been made to address problems with the prior plan. Dckt. 73. The Amended Plan calls for plan payments of $1,120.00, with Amador County Tax Collector and Wells Fargo Bank, N.A., each being paid $50.00 per month for the first eleven months. The Amended Plan also calls for Debtor to sell her real property within twelve months. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on July 12, 2018. Dckt. 86. The Chapter 13 Trustee does not oppose the plan, provided there is an explicit statement included in the plan that the Chapter 13 Trustee shall be the disbursing agent on the Class 1 arrearage to Wells Fargo Bank, N.A., and on the Class 2 Claim of Amador County Tax Collector. Both claimants hold liens on the real property commonly known as 17071 Wilderness Way, Jackson, California, which is to be sold. The Chapter 13 Trustee will provide oversight for the satisfaction of those leans by ensuring the checks are exchanged with the title company when escrow is closed.

RULING

At the hearing, Debtor proposed the following amendment to satisfy the Chapter 13 Trustee's concerns: ~~**Payment of the Wells Fargo Home Mortgage and Amador County Tax Collector secured claims shall be paid through the Plan by the Chapter 13 Trustee, with such payment being made through the sales escrow as determined appropriate by the Chapter 13 Trustee**~~.

~~The Second 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 Donna Welch ("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 1, 2018, as amended to provide for payment of the Wells Fargo Home Mortgage and Amador County Tax Collector secured claims through the Plan by the Chapter 13 Trustee, with such payment being made through the sales escrow as determined appropriate by the Chapter 13 Trustee, 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.~~

12. 16-25173-E-13 RONALD GRASSI MOTION TO MODIFY PLAN
PLC-4 Peter Cianchetta 6-19-18 [124]

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 19, 2018. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

Ronald Grassi ("Debtor") seeks confirmation of the Modified Plan because his income changed after changing employment. Dckt. 126. The Modified Plan calls for $47,000.00 to be paid through June 2018 and for plan payments of $3,500.00 to begin with the July 2018 payment. Dckt. 127. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on July 17, 2018. Dckt. 135. The Chapter 13 Trustee argues that the proposed order confirming the plan lists a dividend to unsecured claims of 2.00%, but the Modified Plan itself does not list that percentage dividend. In fact, the Modified Plan proposes a 100.00% dividend to unsecured claims. Dckt. 127 at 5. Debtor has proposed inconsistent terms for confirmation.

The Chapter 13 Trustee also states that there should be an additional plan term regarding payments that Debtor alleges to be receiving from family court. Debtor's declaration mentions that there

was a stipulation in family court for Debtor's ex-wife to pay $1,000.00 per month to Debtor, and the Chapter 13 Trustee argues that such a disclosure should be placed either in Section 2.02 of the Modified Plan or in the additional provisions. The Chapter 13 Trustee confirms that he has received $5,000.00 from the ex-wife so far.

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

13. 18-23177-E-13 AP-1 | **MOHAMAD SALIM** **Pro Se** | **OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A. 6-28-18 [18]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, and Office of the United States Trustee on June 28, 2018. By the court's calculation, 33 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

Wells Fargo Bank, N.A. ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

A. Mohamad Salim's ("Debtor") Plan was not proposed in good faith.

B. The Plan does not provide for Creditor's pre-petition arrears.

C. The Plan is not feasible.

Creditor's objections are well-taken. Creditor argues that the Plan was not filed in good faith because there is no loan modification application under review, the plan is not feasible, and also lacks a legitimate bankruptcy purpose. A court shall confirm a plan if the plan has been proposed in good faith and not by any means forbidden by law. 11 U.S.C. §§ 1325(a)(3). Debtor has the burden of establishing that a plan has been proposed in good faith. *In re Warren,* 89 B.R. 87, 93 (B.A.P. 9th Cir. 1988).

In determining whether a plan has been proposed in good faith, a court should consider a list of factors which include, but are not limited to:

> (1) the debtor's employment history, ability to earn, and likelihood of future increases in income;
>
> (2) the probable or expected duration of the plan;
>
> (3) the extent to which secured claims are modified;
>
> (4) the frequency with which the debtor has sought relief under the Bankruptcy Reform Act;
>
> (5) the motivation and sincerity of the debtor in seeking chapter 13 relief.

Id.

Here, Creditor's pre-petition arrearage is a substantial amount of $286,702.15. Proof of Claim 3. According to Creditor, Debtor has not filed a loan modification application that is under active review. Creditor argues that because Debtor has failed to apply for a loan modification, the proposed Plan lacks a legitimate bankruptcy purpose.

Creditor alleges that Debtor will have to increase plan payments to Creditor to approximately $4,780.87 monthly in order to cure Creditor's pre-petition arrears over a period not to exceed sixty months. The current Plan provides for payments to the Chapter 13 Trustee in the sum of $1,540.00 per month for thirty-six months.

Creditor alleges that the Plan is not feasible. 11 U.S.C. § 1325(a)(6). Debtor's Schedule J indicates that he has disposable income of 1,558.00. Dckt. 1. However, as Creditor alleges, Debtor will have to increase plan payments to Creditor to approximately $4,780.87 to cure Creditor's pre-petition arrears. Debtor lacks sufficient monthly disposable income to fund the Plan. Thus, the Plan may not be confirmed. FN.1.

FN.1. The court notes that this is Debtor's second recent case. The prior case was filed on April 9, 2017, and dismissed on November 7, 2017. 17-22363. In the prior case, Debtor was represented by counsel. The prior case was dismissed due to a $3,213 delinquency in plan payments. 17-22363; Civil Minutes, Dckt. 68.

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

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

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

The Objection to the Chapter 13 Plan filed by Wells Fargo Bank, N.A. ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

14. 18-23177-E-13 DPC-1 | **MOHAMAD SALIM** **Pro Se** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 6-22-18 [14]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor (*pro se*) on June 22, 2018. By the court's calculation, 39 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. Mohamad Salim ("Debtor") has failed to provide the Chapter 13 Trustee with tax returns.

B. Debtor has failed to provide the Class 1 Checklist and Authorization to Release Information forms to the Chapter 13 Trustee.

C. Debtor cannot make plan payments based on income listed on Schedule I.

D. Debtor may have received undisclosed assistance in the preparation of documents from bankruptcy attorney Steven Shumway.

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

11 U.S.C. § 1325(a)(1) provides for confirmation of a plan if it complies with Chapter 13 provisions and other applicable Code provisions. Debtor has proposed a plan payment of $1,540.00 but has not provided the Class 1 Checklist and Authorization to Release Information forms to the Chapter 13 Trustee as required by Local Rule 3015-1(b)(6). Debtor also fails to provide additional details to support the monthly rental income provided in Schedule I, line 8a. Dckt. 1. The Plan does not comply with 11 U.S.C. § 1325(a)(1).

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Claimant Wells Fargo Bank, N.A., filed a proof of claim on June 28, 2018, that includes a pre-petition arrearage of $286,702.15. Proof of Claim 3. Debtor alleges that he is paying a reduced adequate protection payment of $1,350.00 on the loan during loan modification, but Wells Fargo Bank, N.A., does not have a loan modification application on file as of June 19, 2018. Dckt. 18. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

A statement may need to be submitted to the court as to whether Mr. Shumway's services were terminated after the prior case, Case No. 17-22363, and whether the alleged assistance in preparing documents in the instant case was explicitly pro bono. Pursuant to 11 U.S.C. § 329(a) If any future compensation from Debtor to Mr. Shumway is expected, this must be disclosed to the court.

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

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

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

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

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

15. 18-23256-E-13 DPC-1 — MATEO/EVA GALVAN, Harry Roth — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK, 7-2-18 [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 Objection. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on July 2, 2018. By the court's calculation, 29 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. Mateo Galvan and Eva Galvan ("Debtor") have not made any plan payments.

B. The Plan fails to provide a monthly dividend for attorney's fees.

C. The Plan exceeds sixty months.

D. Debtor improperly lists an auto claim in Class 2 of the Plan, which should be listed in Class 4.

E. Debtor fails to list a leased trailer in Class 4 of the Plan.

F. Debtor lists business income on Schedule I but fails to file business documents.

G. The Plan is not Debtor's best effort because there is extra income that can be contributed to the Plan.

The Chapter 13 Trustee's objections are well-taken. The Chapter 13 Trustee asserts that Debtor is $2,930.00 delinquent in plan payments, which represents one month of the $2,930.00 plan payment. According to the Chapter 13 Trustee, the Plan in § 2.01 calls for payments to be received by the Chapter 13 Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6). Debtor has paid $0.00 into the Plan to date.

The Plan fails to provide a monthly dividend for attorney's fees in § 3.06. Given that Debtor is represented by counsel in this case, it does not appear that Debtor can comply with the Plan. 11 U.S.C. § 1325(a).

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Chapter 13 Trustee, the Plan proposes to pay $2,930.00 for sixty months, which totals $175,800.00. The total of administrative fees, debts that Debtor is proposing to pay, and interest rate is $271,006.00 without considering 7.5% trustee compensation, however. It appears that the Plan will complete in ninety-five months and thus exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

Debtor improperly lists a 2013 Chevrolet Silverado in Class 2 claims with a value of $0.00. According to the Chapter 13 Trustee, Debtor was actually a co-signer on this auto debt for his nephew Roberto Garcia who makes the payments and is current. This debt should be listed in Class 4 of the Plan.

Debtor lists a leased trailer on Schedule G. Dckt. 1. However, Debtor fails to list this lease in Section 4.02 of the Plan.

Debtor lists business income on Schedule I. Dckt. 1. The Chapter 13 Trustee argues that Debtor has failed to file a statement of gross business income and expenses attached to Schedule I. Line 8a of Schedule I requires Debtor to "[a]ttach a statement for each property and business showing gross receipts, ordinary and necessary business expenses, and the total monthly net income." Debtor is required to submit that statement and cooperate with the Chapter 13 Trustee. 11 U.S.C. § 521(a)(3). Debtor has not provided the required attachment.

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

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

Debtor is over median income and proposes plan payments of $2,930.00 for sixty months, with a 0% dividend to unsecured claims. Dckt. 5. Debtor's projected disposable month income on Schedule J reflects $3,063.00, and Debtor is only proposing a plan payment of $2,930.00. Debtor has not explained how unsecured claims are entitled to nothing when additional disposable income exists. Thus, the court may not approve the Plan.

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

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

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

16. 17-23832-E-13 HEIDI BAKER — MOTION TO SELL
SLE-1 Steele Lanphier — 7-5-18 [20]

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

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

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee and Office of the United States Trustee on July 5, 2018. By the court's calculation, 26 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 not been properly 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 denied without prejudice.

The Bankruptcy Code permits Heidi Baker, 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 17780 County Road 97e, Woodland, California ("Property"). Subsequently, the Motion also identifies the property to be sold as 2210 Russell Circle, Woodland, California.

INSUFFICIENT NOTICE OF MOTION

Movant provided twenty-six days' notice of this Motion. Federal Rule of Bankruptcy Procedure 2002(a)(2) requires a minimum of twenty-one days' notice of the hearing, and Local Bankruptcy Rule 9014-1(f)(1)(B) requires an additional fourteen days for parties to file written opposition. Those time periods do not run concurrently. Those two minimums total thirty-five days. Movant has provided nine fewer days than the minimum. Failure to provide the require notice is grounds to deny the Motion without prejudice. As addressed below, Debtor has substantive problems with the present Motion as well.

REVIEW OF MOTION

The proposed purchasers of the Property are Kelley Weiss and Robert Newcomb, and the terms of the sale are:

A. Purchase price of $535,000.00, and

B. Net proceeds of approximately $102,432.47.

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on July 16, 2018. Dckt. 24. The Chapter 13 Trustee notes that the Motion first identified one property that is to be sold, but then states a different property later in the Motion. He also argues that there is insufficient detail about the proposed sale, including lack of a purchase agreement, an estimated settlement statement, the identities of any realtors and escrow company, and any discussion of how the buyer was chosen and their relationship with Movant, if any.

Finally, the Chapter 13 Trustee notes that Movant has not disclosed how the proceeds will be used and has not acknowledged that they will need to be reinvested to maintain the claimed homestead exemption.

DISCUSSION

Movant has not provided any evidence to the court that the sale, as proposed, is in the best interest of the Estate. Instead, Movant states in her Declaration that she believes "that the sales price and other terms in the offer from the buyer are the best that I could achieve, given the current market conditions and the fact that we are in a Chapter 13 Bankruptcy." Dckt. 22 at 2.

Movant has not discussed whether a real estate broker was consulted or how Movant as a layperson was able to determine that the proposed sales price was the best she could achieve. Instead, Movant's Declaration reads with a sense of urgency, that she is "anxious to conclude the sale" because she moved and "cannot afford to pay for two properties." *Id.* at 1, 2.

Movant has not provided a purchase and sale agreement stating the terms of the sale as an exhibit in support of the Motion.

The Motion and Declaration appear to avoid addressing the economics of the proposed sale, not showing what liens and expenses are to be paid. No information is provided about the relationship, if any, of the proposed purchasers to Debtor.

The sales price is stated to be $535,000.00. Motion ¶ 6; Dckt. 20.

On Schedule A/B, Debtor lists owning the following two properties, and on Schedule D, the liens encumbering them are:

A. 2210 Russell Circle.....$520,000 FMV (net of $31,200 sales costs)

River City Bank.....($412,480) Deed of Trust

B. 17780 County Rd 97E.....$994,461 FMV (net of $59,668 sales costs)

River City Bank.....($506,871) Deed of Trust

Dckt. 1.

The court notes that River City Bank has not filed proofs of claim in this case, so the court only has the Schedule D stated amount of the secured claims. Debtor has included River City Bank on the Master Mailing List. Dckt. 3.

Adding back the deductions for the costs of sale, there being no real estate broker authorized to be employed, using Debtor's numbers and not reducing the debt for a year of payments, a rough calculation is:

2210 Russell Circle	17780 County Rd 97E
$551,200.00	$1,054,149.00
($412,480.00)	($506,871.00)
----------	----------
$138,720.00	$565,058.00

It appears that Debtor may be intending to sell the Russell Circle Property. If so, even after a $100,000.00 exemption, there is $38,000.00 of non-exempt money for the estate.

Even the lower $535,000.00 sales price, less the ($412,480) in secured debt, would generate $122,520 in sales proceeds, which after a $100,000 homestead exemption would still leave $22,520 in non-exempt monies.

While Movant may be in a hurry to pull out her $100,000 in exempt proceeds, (which must be reinvested within six months to be exempt from creditors), she has not demonstrated how these monies will continue to be used to fund her "residence."

Debtor claims a $100,000 homestead exemption in the Russell Circle Property pursuant to California Code of Civil Procedure § 704.730, which provides in pertinent part:

"§ 704.730. Amount of homestead exemption

(a) The amount of the homestead exemption is one of the following:

(1) Seventy-five thousand dollars ($75,000) unless the judgment debtor or spouse of the judgment debtor who resides in the homestead is a person described in paragraph (2) or (3).

(2) One hundred thousand dollars ($100,000) if the judgment debtor or spouse of the judgment debtor who resides in the homestead is at the time of the attempted sale of the homestead a member of a family unit, and there is at least one member of the family unit who owns no interest in the homestead or whose only interest in the homestead is a community property interest with the judgment debtor. . . ."

The above provision specifies a dollar amount of a homestead exemption, but not in what and how the exemption is asserted.

In California Code of Civil Procedure § 704.720 (emphasis provided), California law provides that when a homestead exemption is claimed:

§ 704.720. Exemption from sale; Exemption of sale proceeds or indemnification

(a) A **homestead is exempt from sale** under this division to the extent provided in Section 704.800.

(b) If a **homestead is sold** under this division or is **damaged** or **destroyed** or is **acquired for public use**, the proceeds of sale or of insurance or other indemnification for damage or destruction of the homestead or the **proceeds received as compensation for a homestead** acquired for public use are exempt in the amount of the homestead exemption **provided in** Section **704.730.** The proceeds are **exempt for a period of six months after the time the proceeds are actually received by the judgment debtor**, except that, if a homestead exemption is applied to other property of the judgment debtor or the judgment debtor's spouse during that period, the proceeds thereafter are not exempt.

On its face, the proceeds are exempt for only six months, and if the judgment debtor claims a homestead exemption in another residence, the proceeds lose the exempt status, even during the six-month period. This allows the judgment debtor to use the monies to acquire a new homestead property, not to receive a perpetual exempt pot of money, protected from creditor claims.

The bankruptcy court in *In re Binesh*, addressed how this exemption applies in bankruptcy, concluding that if the debtor in bankruptcy did not reinvest the exempt proceeds in a new homestead property within the six-month period, the exemption was lost and the Chapter 7 trustee was entitled to the monies for the bankruptcy estate. 542 B.R. 1 (Bankr. C.D. Cal. 2015).

This dates back to the ruling of the Ninth Circuit Court of Appeals in *England v. Golden (In re Golden)*, 789 F.2d 698, 700 (9th Cir. 1985), determining that while the exemption was claimed when the

bankruptcy case was filed (debtor Golden sold the homestead property pre-petition, and the six-month period had not expired), because the debtor failed to have reinvested the homestead exempt proceeds when the six-month period expired post-petition, the homestead exemption expired, and the monies were non-exempt monies of the bankruptcy estate. Most recently, the Ninth Circuit Court of Appeals applied this reinvestment requirement in *Wolfe v. Jacobson (In re Jacobson)*, 676 F.3d 1193, 1200-1201 (9th Cir. 2012), stating:

> Similarly, we analyze the California homestead exemption in terms of the exact scope of the rights it confers at the time of the bankruptcy petition. In *In re Golden*, 789 F.2d 698 (9th Cir. 1986), . . . We rejected that argument and held the debtor had received the proceeds subject to the reinvestment condition. Id. Those proceeds could thus lose their exempt status once the reinvestment period lapsed. *Id*.
>
> There is no material difference between *Golden* and this case. The homestead exemption gave the Jacobsons clearly defined rights with respect to the Kensington property. The Jacobsons had a right to $150,000 in proceeds. Cal. Civ. Proc. Code § 704.730(a)(3) (2007). That right was contingent on their reinvesting the proceeds in a new homestead within six months of receipt. Cal. Civ. Proc. Code § 704.720(b). The Jacobsons did not abide by that condition and thus forfeited the exemption.
>
> The Jacobsons argue *Golden* is inapposite because Myrna filed for bankruptcy before the homestead was sold and thus claimed an exemption in the Kensington property, not the proceeds. We reject the argument. **The homestead exemption merely gave the Jacobsons a conditional right to a portion of the proceeds from the sale of the Kensington property.** There was **no exemption in the** Kensington **property itself**. To the contrary, the exemption explicitly allowed Cunningham to force a judicial sale of the Kensington property. Cal. Civ. Proc. Code § 704.740. The Jacobsons could thus expect no more than $150,000 in proceeds that were subject to a reinvestment requirement.
>
> In trying to distinguish *Golden*, the Jacobsons essentially ask us to read out the reinvestment requirement from the homestead exemption. However, **"[n]othing in [11 U.S.C. § 522(b)] limits [California's] power to restrict the scope of its exemptions**; indeed, it could theoretically accord no exemptions at all." *Owen v. Owen*, 500 U.S. 305, 308, 111 S. Ct. 1833, 114 L. Ed. 2d 350 (1991). The Bankruptcy Code does not allow the Jacobsons to invoke one part of the homestead exemption and ignore another part.

In the present case, the Chapter 13 Trustee argues that Debtor will sell the property and claim an exemption, subject to a condition subsequent, in the sales proceeds. Further, if the condition subsequent is not satisfied, then the monies are not exempt and the monies to fund the Chapter 13 Plan in good faith have increased thereby. FN.1.

FN.1. The court acknowledges that the Chapter 13 Trustee's statement of portion of the Response was shorthanded. The court provides the more detailed discussion to ensure that all parties understand the court's application of the law. *See United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 130 S. Ct.

1367, 1381 n.14, 176 L. Ed. 2d 158, 173 n.14 (2010) (instructing courts to properly apply the law to the facts, not merely grant relief as requested).

In her Declaration, Debtor testifies:

> "6. I believe that the sale of this real property necessary to my financial well-being because I have moved my residence and cannot afford to pay for two properties."

Declaration ¶ 6, Dckt. 22. It appears that Debtor will not be reinvesting these monies into a new homestead property, having already "moved my residence."

Debtor has filed a change of address, showing the County Rd 97e Property as her new address. Given the size of the equity in that property, Debtor's full homestead exemption appears to be exhausted by the value of the County Rd 97e Property.

This compounds Debtor's challenges in trying to proceed with the present Motion. It also appears to demonstrate that Debtor believes that she may obtain the extra ordinary relief.

Complicating the above problems is that Debtor offers no evidence of how this property was properly marketed and the fair market value received. While Debtor promises to pay her creditors holding general unsecured claims in full, she chooses to do so over sixty months with no interest. If there is more value to this property and it is to be sold, the full fair market value needs to be received, not leaving creditors to gamble that Debtor will be able to perform a plan that may, at a future date, pay them in full.

The court also notes that if $535,000.00 is the fair market value, Debtor needs to fulfill her duties to get such sale done. No real estate broker has been authorized to be employed, so no commission can be paid. If there is an undisclosed broker in the background who was intending to take an undisclosed, unauthorized commission, seeking retroactive authorization to be employed is a possibility—if proper grounds for retroactive authorization can be established.

The Motion is denied without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Sell Property filed by Heidi Baker, 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 the Motion is denied without prejudice.

17. **17-27692-E-13** **ELIZABETH MANZO** **MOTION TO APPROVE STIPULATION**
PLC-3 **Peter Cianchetta** **RE: CLAIM AND NON OPPOSITION TO STIPULATION RE: MARITAL PROPERTY**
7-13-18 [75]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 13, 2018. By the court's calculation, 18 days' notice was provided. The court set the hearing for July 31, 2018. Dckt. 88.

The Motion for Approval of Compromise 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 for Approval of Compromise is granted.

Elizabeth Manzo, Chapter 13 Debtor, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Esteban Cardiel ("Settlor"). The claims and disputes to be resolved by the proposed settlement are related to the status of Settlor's claim and to the treatment of marital property.

Movant and Settlor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 78):

A. Settlor's claim in Movant's bankruptcy case shall be a secured claim in the amount of $27,000.00;

B. Settlor shall file a Satisfaction of Judgment in full as to Movant in the Sacramento County Superior Court Case No. 34-2015-00183327 and recorded with the Sacramento County Recorded upon full payment of the secured claim;

C. Any rights Settlor has against Luis Manzo and Miguel Manzo are unaffected by the compromise; and

D. Settlor does not objection to a stipulation and order filed in Sacramento County Superior Court Dissolution of Marriage Case No. 17FL06143 between Movant and Luis Manzo regarding property trust transfer deeds, by which it is agreed that the following properties are the sole and separate property of Debtor:

1. 5046 Willow Vale Way, Elk Grove CA
2. 1319 Lord Street, Walnut Grove, CA
3. 7321 Elefa Avenue, Elk Grove, CA
4. 470 F Street, Galt, CA
5. 8965 Grant Line Road, Elk Grove, CA
6. 3053 E. Center Street, Acampo, CA
7. 3053 E. Heintz Aly, Acampo, CA

DISCUSSION

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Constr.)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Comm. for Indep. S'holders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424–25 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

3. The complexity of the litigation involved and the expense, inconvenience, and delay necessarily attending it; and

4. The paramount interest of the creditors and a proper deference to their reasonable views.

In re A & C Props., 784 F.2d 1377, 1381 (9th Cir. 1986); *see also In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

Probability of Success

Movant does not address this factor.

Difficulties in Collection

Movant does not address this factor.

Expense, Inconvenience, and Delay of Continued Litigation

Movant argues that any further litigation would be costly.

Paramount Interest of Creditors

Movant argues that the compromise is in the best interest of the Estate because it unconditionally resolves the disputed matters with Settlor. FN.1.

FN.1. In reviewing the Motion, it is questionable as to whether Movant states "grounds" with particularity in the Motion as required by Federal Rule of Bankruptcy Procedure 9013. Rather, it (arguably) merely states Movant's legal conclusion (dictation) to the court that:

> "Debtor contends the settlement agreement is in the best interest of the estate in that it unconditionally resolves the matters in dispute related to Creditor Esteban Cardiel's Claim and avoids further costly litigation. (See, In re MGS Marketing, 111 B.R. 264 (9th Cir. B.A.P. 1990) 'Settlement of suit reversed for failure to show it was in best interest of estate'.)"

Motion, Dckt. 75 at 2:16–20.

The "evidence" provided to the court to make the required findings of fact from which the court then states the conclusions of law starts with a declaration from Movant's counsel. In that Declaration, counsel testifies as to why the court should shorten time for a hearing on this Motion. Declaration, Dckt. 79. No testimony is provided by any person as to the merits of the Motion.

A Stipulation filed as an exhibit, not separately filed with the court, and a proposed order in the state court action are provided. Dckt. 78.

Though the court has, given the circumstances of this case and the related state court action, given a generous reading of these pleadings, all counsel should not be lulled into a perception that pleadings and evidence do not matter. The judges in the District have discussed such practices and are of a mind to have a combined calendar to address Orders to Show Cause and the hearing of such motions by one judge. Under consideration is to have all of these matters set to a special Friday 8:30 a.m. calendar in the

Bakersfield Courthouse to allow one judge (likely the chief bankruptcy judge) to have sufficient time to address any perceived shortcomings with all of the counsel involved and ensure that there is a uniform application of the Rules enacted by the United States Supreme Court.

Consideration of Additional Offers

At the hearing, the court announced the proposed settlement and requested that any other parties interested in making an offer to Movant to purchase or prosecute the property, claims, or interests of the estate present such offers in open court. At the hearing **----------**.

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because it sets Settlor's claim up to be paid in full if a related motion to sell property for $27,000.00 is also approved. The Motion is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Compromise filed by Elizabeth Manzo, 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 the Motion for Approval of Compromise between Movant and Esteban Cardiel ("Settlor") is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Exhibit A in support of the Motion (Dckt. 78), which Settlement includes the agreement of the Parties that the following properties are the sole and separate property of Debtor:
>
> 1. 5046 Willow Vale Way, Elk Grove CA
> 2. 1319 Lord Street, Walnut Grove, CA
> 3. 7321 Elefa Avenue, Elk Grove, CA
> 4. 470 F Street, Galt, CA
> 5. 8965 Grant Line Road, Elk Grove, CA
> 6. 3053 E. Center Street, Acampo, CA
> 7. 3053 E. Heintz Aly, Acampo, CA

18. 17-27692-E-13 ELIZABETH MANZO MOTION TO SELL
PLC-4 Peter Cianchetta 7-16-18 [83]

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

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

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

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 13, 2018. By the court's calculation, 18 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 not 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 ~~denied without prejudice~~.

The Bankruptcy Code permits Elizabeth Manzo, Chapter 13 Debtor, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the real property commonly known as 3053 E Heintz, Acampo, California ("Property").

INSUFFICIENT NOTICE OF MOTION

Movant provided eighteen days' notice of this Motion. Federal Rule of Bankruptcy Procedure 2002(a)(2) requires a minimum of twenty-one days' notice of the hearing. Movant has provided three fewer days than the minimum. The failure to give proper notice is grounds to deny the Motion without prejudice.

The Motion does not disclose certain essential details of the proposed sale. There is no disclosure of who is proposing to buy the Property, and there is no explanation of why a sale of real property is for $27,000.00. See Federal Rule of Bankruptcy Procedure 9013 requiring that the motion itself state with particularity both the grounds upon which the relief is based and the relief itself.

Upon reviewing the attached purchase agreement, the court notes that Christopher Escobar is listed as the buyer, and the sale is for vacant real property, not for a constructed building on property.

The proposed purchaser of the Property is Christopher Escobar, and the terms of the sale are:

A. $27,000.00 purchase price;

B. Initial deposit of $1,000.00;

C. Escrow to close thirty days (before or after some undisclosed date);

D. No agents or brokers involved in the transaction; and

E. Buyer to pay escrow fee, an owner's title insurance policy, and county transfer taxes or fees.

It appears that this is part of the Settlement that Debtor has requested the court to approve. Motion, Dckt. 77. The court has granted that Motion. It appears that this "sale" is a transfer to Mr. Escobar in payment of his secured claim. Stipulation, Exhibit A; Dckt. 78. The Motion states that this "sale" will satisfy the secured claim of Mr. Escobar in full, but it does not state that there are no proceeds for the estate. Motion ¶ 5, Dckt. 83.

DISCUSSION

What is missing from the present Motion is any evidence showing that Debtor is recovering the fair market value of the property. Rather, it is that Debtor and Mr. Escobar have reached an agreement to transfer the property to Mr. Escobar, which will fully satisfy Mr. Escobar's secured claim.

On Schedule A/B, Debtor stated under penalty of perjury that the property that is the subject of this Motion had a value of only $5,000.00. Dckt. 9 at 5. That was filed on November 30, 2017, merely eight months ago. Debtor repeated this value on Amended Schedule A/B filed on June 29, 2018, just thirty days before this hearing. Dckt. 74. Now, the value is stated to be 440% greater. That calls into question what the actual value of this property is for the estate, Debtor, and creditors.

Debtor's proposed Chapter 13 Plan provides for paying $29,393 in general unsecured claims a 100% dividend over sixty months. Plan, Dckt. 10. At the hearing on the Chapter 13 Trustee's Objection to Confirmation, the objection was sustained. Civil Minutes, Dckt. 46. The court also sustained the Objection to Confirmation filed by Mr. Escobar. Order, Dckt. 45. That was in February 2018, and no amended plan has been filed by Debtor.

A review of the original Plan (Dckt. 10) discloses that Debtor could fund the plan with $636.00 per month. That was to pay the Chapter 13 Trustee fees of $51 (est. at 8%), $65 (for $3,845 over sixty months) in fees to Debtor's counsel, and $490 (for $29,393 in claims over sixty-nine months). Those amounts total $606, which would appear to be sufficient.

The Plan provided for an additional Class 4 payment of $456.00 that Debtor would be making to pay the claim secured by the 3053 E Heintz Property that is the subject of this Motion. However, a review of Debtor's Schedules I and J show that such proposed plan term was impossible to perform. Dckt. 9 at 22–25. For Debtor to have $642 of monthly net income on Schedule J, to show she could fund the Plan, there is no payment of this $456 Class 4 payment that Debtor says she was making directly to the creditor.

Looking at Schedule J, it appears that (most charitably stated) Debtor has been "creative" in stating under penalty of perjury her reasonable and necessary expenses. Debtor states that she has two dependents—a ninety-one-year-old father and a twenty-five-year-old daughter. *Id.* at 24. But for those three persons (Debtor showing no contributions to income from either on Schedule I), they have food and housekeeping expenses of $160, clothing and laundry expenses of $60, personal care products and services expenses of $60, and transportation expenses of $200 (Schedule A/B listing Debtor having four vehicles, Dckt. 74 at 7) monthly. *Id.* at 25. Additionally, Debtor has an expense of $100 per month to support a sister in Mexico.

Those expenses do not appear to be credible but ones manufactured to create the appearance of Debtor being able to fund a plan.

The Chapter 13 Trustee's Objection to Confirmation included Debtor having transferred five real properties into a trust, but that they are also listed on Schedule A/B as properties owned by Debtor, but no interest in the trust being listed. Dckt. 29.

On Amended Schedule A/B, Debtor lists owning/having an interest in seven real properties. Dckt. 74 at 3–6. On Schedule D, Debtor states under penalty of perjury that all of the properties, except for the 3053 E. Heintz Property are free and clear of any liens and encumbrances. Dckt. 9 at 14.

While the court does not have an amended plan before it, Debtor's "creativity" in what has been stated on the Schedules, the inability to perform a plan by making monthly payments (as shown on Schedules I and J), and Debtor owning real properties with substantial non-exempt equity, her credibility in pursuing the current motion is in question.

It appears that Debtor and Debtor's counsel need to circle back, determine how Debtor can prosecute a Chapter 13 case in good faith, how to document that proposed sales of properties are in good faith and for fair value, and what Debtor needs to amend to provide accurate statements under penalty of perjury.

At the hearing, Counsel for Debtor addressed these deficiencies by **xxxxxxxxxxxxxxx**.

~~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 proceeds of sale will satisfy the judgment lien of Esteban Cardiel.~~

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 Elizabeth Manzo, 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 ~~Elizabeth Manzo, Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Christopher Escobar or nominee ("Buyer"), the Property commonly known as 3053 E Heintz, Acampo, California ("Property"), on the following terms:~~
>
> ~~A. The Property shall be sold to Buyer for $27,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 86, and as further provided in this Order.~~
>
> ~~B. The sale proceeds shall first be applied to closing costs, 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. 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.~~

FINAL RULINGS

19. 18-21900-E-13 AVN-1 | **CHRISTINA/RICHARD DELGADO** | **Anh Nguyen** | **MOTION TO CONFIRM PLAN** | **6-14-18 [36]**

Final Ruling: No appearance at the July 31, 2018 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 14, 2018. By the court's calculation, 47 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. Christina Delgado and Richard Delgado ("Debtor") have provided evidence in support of confirmation. David Cusick ("the Chapter 13 Trustee") filed a Non-Opposition on June 18, 2018. Dckt. 42.

Debtor filed the First Amended Plan on May 29, 2018. Dckt. 28. The Certificate of Service indicates that Debtor's Motion to Confirm was served on June 14, 2018, however. Dckt. 40. Debtor filed Motion to Confirm First Amended Chapter 13 Plan on June 14, 2018. Dckt. 36. Local Bankruptcy Rule 3015-1(d)(1) requires that "the debtor shall file and serve the modified chapter 13 plan *together* with a motion to confirm it." Despite the procedural error, and given the Chapter 13 Trustee's non-opposition to confirmation, the court grants the Motion.

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 Christina Delgado and Richard Delgado ("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 29, 2018, 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.

20. 16-23406-E-13 MET-1 EMMANUEL/HENNIE CARREON Mary Ellen Terranella MOTION TO MODIFY PLAN 6-25-18 [33]

Final Ruling: No appearance at the July 31, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on June 25, 2018. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is granted.

Emmanuel Carreon and Hennie Carreon ("Debtor") seek confirmation of the Modified Plan because they failed to increase payments under the prior plan and because unsecured claims are less than expected. Dckt. 35. The Modified Plan calls for a term of fifty-two months, with a plan payment of $200.00 in the first month and followed by payments of $785.00 for the remaining months. Dckt. 38. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed an Response on July 17, 2018. Dckt. 46. The Chapter 13 Trustee confirms that Debtor is current under the Plan, but he notes that the Notice of Hearing does not comply with Local Rule 9014-1(d)(3)(B)(iii). The Notice of Hearing does not advise respondents that they can determine whether the matter has been resolved without oral argument or whether the court has issued a tentative ruling, and can view (any) pre-hearing dispositions by checking the court's website after 4:00 p.m. the day before the hearing and that parties appearing telephonically must view the pre-hearing dispositions prior to the hearing.

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 Emmanuel Carreon and Hennie Carreon ("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 25, 2018, 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.

21. 14-20519-E-13 PGM-2 — STEVEN/DEBORAH MCCONNELL — Peter Macaluso — OBJECTION TO NOTICE OF MORTGAGE PAYMENT CHANGE — 6-13-18 [59]

Final Ruling: No appearance at the July 31, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on June 13, 2018. By the court's calculation, 48 days' notice was provided. 28 days' notice is required.

The Objection to Notice of Mortgage Payment Change 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. Upon review of the Objection and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance for the July 31, 2018 hearing.

The hearing on the Objection to Notice of Mortgage Payment Change is continued to 3:00 p.m. on August 28, 2018, by prior order.

Steven McConnell and Deborah McConnell ("Debtor") object to a Notice of Mortgage Payment Change filed by HSBC USA, N.A., as Trustee for Structured Adjustable Rate Mortgage Loan TRUST Mortgage Pass-Through Certificates, Series 2004-14 ("Creditor") on May 1, 2018. Debtor argues that the projected escrow increase should be offset by a payment of $17,919.28 and should indicate an overage of $16,992.04.

On July 19, 2018, the parties stipulated to this hearing being continued. Dckt. 73. The court granted the parties' request and continued the hearing to 3:00 p.m. on August 28, 2018. Dckt. 79. Creditor has been given until August 14, 2018, to file a response to the Objection, and Debtor has been given until August 21, 2018, to reply. *Id.* The hearing on the Objection is continued by prior order.

22. 18-22819-E-13 DPC-1 | **RANDY TURNER** **Aubrey Jacobsen** | **OBJECTION TO DISCHARGE BY DAVID P. CUSICK** **6-11-18 [18]**

Final Ruling: No appearance at the July 31, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on June 11, 2018. By the court's calculation, 50 days' notice was provided. 28 days' notice is required.

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

The Objection to Discharge is sustained.

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

Debtor filed a Chapter 7 bankruptcy case on November 18, 2014. Case No.14-31322. Debtor received a discharge on February 23, 2015. Case No. 14-31322, Dckt. 14.

The instant case was filed under Chapter 13 on May 7, 2018.

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

DEBTOR'S NON-OPPOSITION

Debtor filed a Non-Opposition on June 19, 2018. Dckt. 30. Debtor states that he does not seek a discharge in this case.

RULING

Here, Debtor received a discharge under 11 U.S.C. § 727 on February 23, 2015, which is less than four years preceding the date of the filing of the instant case. Case No. 14-31322, Dckt. 14. Therefore, pursuant to 11 U.S.C. § 1328(f)(1), Debtor is not eligible for a discharge in the instant case.

Therefore, the Objection is sustained. Upon successful completion of the instant case (Case No. 18-22819), the case shall be closed without the entry of a discharge, and Debtor shall receive no discharge in the instant case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Discharge filed by David Cusick, the Chapter 13 Trustee, ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to Discharge is sustained, and upon successful completion of the instant case, Case No. 18-22819, the case shall be closed without the entry of a discharge.

23. 17-25320-E-13 DAVID/KIMBERLY TREXLER MOTION TO CONFIRM PLAN
EJS-2 Eric Schwab 5-25-18 [60]

Final Ruling: No appearance at the July 31, 2018 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 May 25, 2018. By the court's calculation, 67 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. David Trexler and Kimberly Trexler ("Debtor") have provided evidence in support of confirmation. David Cusick ("the Chapter 13 Trustee") filed a Non-Opposition on July 6, 2018. Dckt. 68. 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 David Trexler and Kimberly Trexler ("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 25, 2018, 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. 15-22829-E-13 DANIEL/MALIA PALU MOTION TO MODIFY PLAN
KWS-1 Kyle Schumacher 6-19-18 [50]

Final Ruling: No appearance at the July 31, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 19, 2018. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Daniel Palu and Malia Palu ("Debtor") have filed evidence in support of confirmation. David Cusick ("the Chapter 13 Trustee") filed a Response indicating non-opposition on July 17, 2018. Dckt. 60. 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 Daniel Palu and Malia Palu ("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 19, 2018, 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.

25. 18-22747-E-13 TAG-1 | **DAVID/CHRISTINA CASTILLO** **Aubrey Jacobsen** | **MOTION TO VALUE COLLATERAL OF BMW FINANCIAL SERVICES, N.A., LLC 6-26-18 [19]**

Final Ruling: No appearance at the July 31, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on June 26, 2018. By the court's calculation, 35 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 David and Christina Castillo ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $5,532.00.

The Motion filed by David Castillo and Christina Castillo ("Debtor") to value the secured claim of BMW Financial Services NA, LLC ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2011 MINI Cooper Clubman S ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $5,532.00 as of the petition filing date.. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

CREDITOR'S NON-OPPOSITION

Creditor filed a Non-Opposition on July 16, 2018. Dckt. 24. Creditor states that it consents to the value proposed in the Motion.

CHAPTER 13 TRUSTEE'S NON-OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed a Non-Opposition on July 17, 2018. Dckt. 26. The Chapter 13 Trustee states he does not oppose the Motion, and he notes that Creditor's proof of claim lists $5,532.00 as the secured portion of the claim.

RULING

The lien on the Vehicle's title secures a purchase-money loan incurred on January 11, 2014, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $8,320.86. 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 $5,532.00, 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 David Castillo and Christina Castillo ("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 BMW Financial Services NA, LLC ("Creditor") secured by an asset described as 2011 MINI Cooper Clubman S ("Vehicle") is determined to be a secured claim in the amount of $5,532.00 and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $5,532.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

26. **17-25354-E-13** **PETER/ALISON BIPPART** **MOTION TO CONFIRM PLAN**
EJS-2 **Eric Schwab** **5-29-18 [57]**

Final Ruling: No appearance at the July 31, 2018 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 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.

27.	**18-20554-E-13 JOS-2**	**FLORENTINO RAGADIO AND FEMMIE RAGADIO** **Jeanne Serrano**	**AMENDED MOTION TO CONFIRM PLAN** **6-6-18 [36]**

Final Ruling: No appearance at the July 31, 2018 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 6, 2018. By the court's calculation, 55 days' notice was provided. 42 days' notice is required. FED. R. BANKR. P. 2002(b); 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 denied as moot.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Subsequent to the filing of this Motion, Florentino Ragadio and Femmie Ragadio ("Debtor") filed a Second Amended Plan and corresponding Motion to Confirm on June 22, 2018. Dckts. 40, 43. That is the current motion set for consideration. No new plan was filed with this Motion; instead, Debtor sought confirmation of an amended plan that the court had already denied confirmation. *See* Dckt. 34, 35. The Motion to Confirm the Amended Plan is denied 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 the Amended Chapter 13 Plan filed by Florentino Ragadio and Femmie Ragadio ("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 as moot, no plan being presented with the Motion.

28.	**18-20554-E-13 JOS-3**	**FLORENTINO RAGADIO AND FEMMIE RAGADIO** **Jeanne Serrano**	**MOTION TO CONFIRM SECOND AMENDED PLAN** **6-22-18 [40]**

Final Ruling: No appearance at the July 31, 2018 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 22, 2018. 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 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. Florentino Ragadio, Jr., and Femmie Ragadio ("Debtor") have provided evidence in support of confirmation. David Cusick ("the Chapter 13 Trustee") filed a Non-Opposition on July 3, 2018. Dckt. 46 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 Florentino Ragadio, Jr., and Femmie Ragadio ("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 22, 2018, 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.

29. 18-23462-E-13 DPC-1 | **SHARON JACKSON** **Marc Caraska** | **OBJECTION TO DISCHARGE BY DAVID P. CUSICK** **6-20-18 [21]**

Final Ruling: No appearance at the July 31, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on June 20, 2018. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

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

The Objection to Discharge is sustained.

Name of Objecting Party, the Chapter 13 Trustee, ("Objector") objects to Sharon Jackson's ("Debtor") discharge in this case. Objector argues that Debtor is not entitled to a discharge in the instant bankruptcy case because Debtor previously received a discharge in a Chapter 7 case.

Debtor filed a Chapter 7 bankruptcy case on February 28, 2017. Case No. 17-21219. Debtor received a discharge on July 7, 2017. Case No. 17-21219, Dckt. 32.

The instant case was filed under Chapter 13 on June 1, 2018.

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

Here, Debtor received a discharge under 11 U.S.C. § 727 on July 7, 2017, which is less than four years preceding the date of the filing of the instant case. Case No. 17-21219, Dckt. 32. Therefore, pursuant to 11 U.S.C. § 1328(f)(1), Debtor is not eligible for a discharge in the instant case.

Therefore, the Objection is sustained. Upon successful completion of the instant case (Case No. 18-23462), the case shall be closed without the entry of a discharge, and Debtor shall receive no discharge in the instant case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Discharge filed by David Cusick, the Chapter 13 Trustee, ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to Discharge is sustained, and upon successful completion of the instant case, Case No. 18-23462, the case shall be closed without the entry of a discharge.

30. **18-23365-E-13** **TENA ROBINSON**
Jason Borg

OBJECTION TO CONFIRMATION OF PLAN BY BOSCO CREDIT, LLC
7-3-18 [23]

Final Ruling: No appearance at the July 31, 2018 hearing is required.

Local Rule 9014-1(f)(2) Objection. FN.1.

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on July 3, 2018. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. Upon review of the Objection and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Objection. The defaults of the non-responding parties in interest are entered.

The Objection to Confirmation of Plan is overruled as moot.

Bosco Credit LLC ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

A. The Plan modifies the rights of a creditor whose claim is secured only by a security interest in real property that is Tena Robinson's ("Debtor") principal residence, and

B. Debtor does not have sufficient income, as listed on Schedules I & J, to afford the plan payments.

Subsequent to the filing of this Objection Debtor filed an Amended Plan and corresponding Motion to Confirm on July 19 and July 23, 2018. Dckts. 43, 44. Filing a new plan is a de facto withdrawal of the pending plan. The Objection to Confirmation is overruled as moot, and the plan is not confirmed.

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

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

31.	**18-23365-E-13** **DPC-1**	**TENA ROBINSON** **Jason Borg**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **7-2-18 [19]**

Final Ruling: No appearance at the July 31, 2018 hearing is required.

David Cusick ("the Chapter 13 Trustee") having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Objection to Confirmation was dismissed without prejudice, the matter is removed from the calendar.**

32. **17-27077-E-13** **MICHAEL SCALLIN** **MOTION TO CONFIRM PLAN**
PLC-2 **Peter Cianchetta** **6-20-18 [49]**

Final Ruling: No appearance at the July 31, 2018 hearing is required.

The Motion to Confirm Chapter 13 Plan is dismissed without prejudice.

Michael Scallin ("Debtor") having filed a "Request to Drop Motion," which the court construes to be an Ex Parte Motion to Dismiss the pending Motion on July 20, 2018, Dckt. 64; no prejudice to the responding party appearing by the dismissal of the Motion; Debtor having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Chapter 13 Trustee; the Ex Parte Motion is granted, Debtor's Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm Chapter 13 Plan filed by Michael Scallin ("Debtor") having been presented to the court, Debtor having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 64, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Confirm Chapter 13 Plan is dismissed without prejudice.

33. 16-23496-E-13 MICHELLE DORENKAMP MOTION TO MODIFY PLAN
KWS-1 Kyle Schumacher 6-26-18 [91]

Final Ruling: No appearance at the July 31, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 26, 2018. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Michelle Dorenkamp ("Debtor") has filed evidence in support of confirmation. David Cusick ("the Chapter 13 Trustee") filed a Response indicating non-opposition on July 17, 2018. Dckt. 101. 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 Michelle Dorenkamp ("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 26, 2018, 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.

34. 18-23297-E-13 DPC-1 | **ROWENA GARCIA** **Kristy Hernandez** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **7-2-18 [15]**

Final Ruling: No appearance at the July 31, 2018 hearing is required.

Local Rule 9014-1(f)(2) Objection.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on July 2, 2018. By the court's calculation, 29 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. Upon review of the Objection and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Objection. The defaults of the non-responding parties in interest are entered.

The Objection to Confirmation of Plan is overruled as moot.

David Cusick ("the Chapter 13 Trustee") filed this Objection on July 2, 2018. On July 16, 2018, Rowena Garcia ("Debtor") filed an amended plan and corresponding motion to confirm. Dckt. 25, 27. The filing of a new plan is a de facto withdrawal of the pending one. Therefore, 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 filed by David Cusick ("the Chapter 13 Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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