UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

August 25, 2020 at 2:00 p.m.

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1. **18-27720-E-13** **DAVID RYNDA**
TLW-14

CONTINUED MOTION FOR COMPENSATION FOR TRACY L. WOOD, DEBTORS ATTORNEY(S)
4-29-20 [305]

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, and Office of the United States Trustee on April 29, 2020. By the court's calculation, 41 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Allowance of Professional Fees is xxxxx.

Tracy L. Wood, the Attorney ("Applicant") for David Jerome Rynda, the Chapter 13 Debtor ("Client"), makes a Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period December 12, 2018 through April 29, 2020 Applicant requests fees and expenses in the total amount of $30,537.25, with fees in the amount of $25,916.00 plus $4,000 for the Chapter 13 base fee, and costs in the amount of $221.25.

APPLICABLE LAW

For Chapter 13 bankruptcy cases, Local Bankruptcy Rule 2016-1 provides, in pertinent part,

the following for the allowance of reasonable attorney's fees for counsel representing a debtor. An attorney and client may elect for the attorney to be paid a flat ("no-look") fee of up to $4,000.00 in nonbusiness cases and $6,000.00 in cases in which the individual debtor has business obligations and assets. L.B.R. 2016-1(c). The approval of the no-look fee is made in the order confirming the Chapter 13 plan. *Id.* The attorney and client can opt-out of the no-look fee and have the attorney's fees and costs allowed as otherwise permitted under 11 U.S.C. §§ 300, 331. L.B.R. 2016(a).

If the attorney and client elect the no-look fee for the services relating to the Chapter 13 case, the attorney is allowed additional compensation beyond the scope of the no-look fees. *See*, L.B.R. 2016-1(c)(3).

The fee election is stated in the Rights and Responsibilities signed by the attorney and debtor filed in the bankruptcy case. L.B.R. 2016-1(a).

The Rights and Responsibilities document filed by Debtor and Applicant in this case states with respect to fees:

> Initial fees charged in this case are $ 4,500.00 , and of this amount, $ 0.00 was paid by the Debtor before the filing of the petition. While this initial fee should be sufficient to fully and fairly compensate counsel for all pre-confirmation services and most post-confirmation services rendered in the case, where substantial and unanticipated post-confirmation work is necessary, the attorney may request that the court approve additional fees. If additional fees are approved, they shall be paid through the plan by the chapter 13 trustee unless otherwise ordered. The attorney may not receive fees directly from the Debtor.

Dckt. 14.

The scope of pre-petition, post-filing, confirmation, and post-confirmation services are the standard ones expected, and do not include adversary quite title litigation. However, they do include confirmation of a plan, entry of a discharge (if the debtor is eligible), and closing of the case. *Id.*

Statutory Basis For Allowance of Fees

Congress provides in 11 U.S.C. § 329 that the bankruptcy court shall determine whether fees charged by an attorney for a debtor are reasonable. For a Chapter 13 case, Local Bankruptcy Rule 2016-1 provides the vehicle for the court making that determination and sets some per se allowable amounts (which are always subject to a case by case review if appropriate).

Using the provisions of 11 U.S.C. § 330 in determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including–

> (A) the time spent on such services;
>
> (B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

(i) unnecessary duplication of services; or

(ii) services that were not—

(I) reasonably likely to benefit the debtor's estate;
(II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). An attorney must "demonstrate only that the services were reasonably likely to benefit the estate at the time rendered," not that the services resulted in actual, compensable, material benefits to the estate. *Ferrette & Slatter v. United States Tr. (In re Garcia)*, 335 B.R. 717, 724 (B.A.P. 9th Cir. 2005) (citing *Roberts, Sheridan & Kotel, P.C. v. Bergen Brunswig Drug Co. (In re Mednet)*, 251 B.R. 103, 108 (B.A.P. 9th Cir. 2000)). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

Reasonable Fees

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

A. Were the services authorized?

B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?

C. Are the services documented adequately?

D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?

E. Did the attorney exercise reasonable billing judgment?

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

Reasonable Billing Judgment

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged for services, the attorney must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the services provided because the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign to run up a [fees and expenses] tab without considering the maximum probable recovery," as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat'l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) ("Billing judgment is mandatory."). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney is obligated to consider:

> (a) Is the burden of the probable cost of legal services disproportionately large in relation to the size of the estate and maximum probable recovery?
>
> (b) To what extent will the estate suffer if the services are not rendered?
>
> (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

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

A review of the application shows that Applicant's services for the Estate include defense of a motion for relief from the automatic stay, preparing and filing several plans and motions to confirm plans, prosecuting an adversary proceeding, and general case administration. The court finds the services were beneficial to Client and the Estate and were reasonable.

Lodestar Analysis

If Applicant has opted out of the no-look fee or there are substantial and unanticipated legal services that have been provided, then such additional fees may be requested as provided in Local Bankruptcy Rule 2016-1(c)(3). The attorney may file a fee application, and the court will consider the fees to be awarded pursuant to 11 U.S.C. §§ 329, 330, and 331. For bankruptcy cases in the Ninth Circuit, "the primary method" to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves "multiplying the number of hours reasonably expended by a reasonable hourly rate." *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). "This calculation provides an objective basis on which to make an initial estimate of the value of a lawyer's services." *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). A compensation award based on the lodestar is a presumptively reasonable fee. *In re Manoa Fin. Co.*, 853 F.2d 687, 691 (9th Cir. 1988).

In rare or exceptional instances, if the court determines that the lodestar figure is unreasonably low or high, it may adjust the figure upward or downward based on certain factors. *Miller v. Los Angeles Cty. Bd. of Educ.*, 827 F.2d 617, 620 n.4 (9th Cir. 1987). Therefore, the court has considerable discretion in determining the reasonableness of a professional's fees. *Gates v. Duekmejian*, 987 F.2d 1392, 1398 (9th Cir. 1992). It is appropriate for the court to have this discretion "in view of the [court's] superior understanding of the litigation and the desirability of avoiding frequent appellate review of what essentially are factual matters." *Hensley*, 461 U.S. at 437. Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate. *See In re Placide*, 459 B.R. at 73 (citing *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

Motion for Relief From the Automatic Stay: Applicant drafted correspondence, communicated with Debtor, reviewed the file, and prepared and filed the substitution of attorney, and drafted the opposition and appeared at the hearing for the Motion for Relief from the Automatic Stay filed by Elina Machado.

Proposed Plans and Motions to Confirm: Applicant prepared, filed, and served nine proposed plans for Debtor along with Motions to Confirm said plans.

Adversary Proceeding: Applicant prepared, filed, and served Debtor's complaint for Quiet Title, and defended against Defendant Elina Machado's Counter Claims. Applicant further prepared, filed, and served discovery.

Case Administration: Applicant prepared, filed Debtor's petition and schedules; prepared filed, and served the instant application for attorney's fees and costs, drafted correspondence, and met with client for administration of the case.

Applicant spent 64.79 hours performing the work in the categories described above.

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

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Tracy L. Wood	64.79	$400.00	$25,916.00

Total Fees for Period of Application	$25,916.00

Costs and Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $221.25 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Parking and Mileage		$221.25
		$0.00
Total Costs Requested in Application		$221.25

REVIEW OF TIME RECORDS AND SET FEES REQUESTED

In the Motion, Applicant requests $4,000.00 as the "Chapter 13 base fee" and $25,916.00 for post-petition litigation. Motion, p. 2:10.5-13; Dckt. 305. In saying $4,000.00 for a "base fee," the court interprets that language to mean "for all of the services required to qualify for a $4,000.00 no-look fee." As discussed above, those services include not only filing a case, but getting a plan confirmed, completed, and discharge entered. There is not a confirmed plan in the current case. It appears that the success of the post-petition litigation with Ms. Machado may obviate a need for a confirmed plan.

Based upon the scope of the actual and necessary work done, a fixed fee other than in the proportions provided in Local Bankruptcy Rule 2016-1(c)(4) may be appropriate. But that is based on the actual work required.

Exhibits B and C filed by Applicant are the billing records to support the $25,916.00 for post-petition litigation services. Exhibit B is for the State Court Litigation. Dckt. 309. The State Court fees total $2,757.00. $1,600 of the fees are for the review of the State Court judge's move out order and drafting the appeal brief.

Exhibit C is for the Adversary Proceeding litigation with Ms. Machado (Mr. Machado having defaulted by not responding). Dckt. 310. Both fees for legal services and expenses are mixed into one set of billings organized by date.

The hours billed and fees are not separately stated, the total hours billed not identified, and there is not a task billing analysis. The court finds helpful, and in most cases essential, for professionals to provide a basic task billing analysis for the services provided and fees charged. This has long been required by the Office of the U.S. Trustee, and is nothing new for professionals in this District. The task billing analysis requires only that the professional organize his or her task billing. The more simple the

services provided, the easier is for Applicant to quickly state the tasks. The more complicated and difficult to discern the tasks from the raw billing records, the more evident it is for Applicant to create the task billing analysis to provide the court, creditors, and U.S. Trustee with fair and proper disclosure of the services provided and fees being requested by this Professional.

A review of the time records does not appear to indicate a large amount of time sunk into any one area. There are several motions for summary judgment, which the court notes were not granted.

Termination, Fee Dispute, and
Pending Motion to Convert or Dismiss

With a settlement having been reached with Ms. Machado and it appearing to have preserved substantial interests of the bankruptcy estate (Settlement Agreement, Dckt. 187), it appears that the legal services of Applicant have been very beneficial to the bankruptcy estate and the Debtor, having achieved establishing his ownership of the property in dispute.

Unfortunately, it appears that the Debtor (individually and serving as the fiduciary Chapter 13 debtor) and Applicant have come to a parting of the ways. On May 15, 2020, in the Adversary Proceeding Applicant filed a Motion to Withdraw as counsel for the Debtor. This is not to withdraw just as counsel for the Debtor in the Adversary Proceeding, but in the bankruptcy case as well. 19-2023; Motion to Withdraw, Dckt. 218.

In the Motion, Applicant asserts that Debtor informed Applicant in a phone call on May 15, 2020, that Applicant was "fired" and that Debtor has filed a complaint with the State Bar. In his Declaration, Applicant states that the disagreement relates to the terms of the fee agreement for services rendered in this bankruptcy case. Dckt. 220. It is asserted that Debtor thinks that a pre-bankruptcy fee agreement for the State Court litigation governs the fees Applicant is entitled to with respect to the bankruptcy case. Applicant states that Debtor signed a subsequent bankruptcy fee agreement prior to Applicant undertaking the bankruptcy representation, and the agreement provides for services such as the adversary proceeding to be billed on an hourly basis. A copy of the bankruptcy fee agreement is not filed with the Motion to Withdraw.

There is also the continued hearing on the Motion to Convert or Dismiss this Chapter 13 case. Motion, Dckt. 283. As discussed in the Civil Minutes from prior hearings on the Motion to Dismiss, the Debtor is in substantial monetary default under the Chapter 13 plan he has proposed and has been unable to make the necessary plan payments. Civil Minutes, Dckt. 283. Debtor also has lost control of the Property, with several boarders he took in refusing to pay rent and then allowing other persons to occupy the Property. *Id.* Debtor has stumbled through multiple unlawful detainer proceedings, with the State Court judges refusing to issue order evicting them because Debtor never recorded a deed (which Debtor now says is lost) giving him title to the Property. Debtor failed to understand, even when pointed out to him by this court, that the federal court has exclusive jurisdiction over property of the estate, or what is asserted to be property of the estate, and the Bankruptcy Code and Rules provide express authority for ordering the turning over of possession of such property to a trustee or other fiduciary (such as a Chapter 13 debtor) of the bankruptcy estate.

Debtor has faced other challenges in this case and leading up to this case. On the eve of bankruptcy he recorded two deeds of trust which appear to be either for antecedent debts or debts which cannot be legally enforced against him. These were to Debtor's brother for an obligation ten years

earlier and a business associate. *Id.* Debtor has not acted on those potentially avoidable transfers. This may be based on a belief that if he performs the settlement with Ms. Machado and sells the Property, all creditors will be paid so as there not being a fraudulent conveyance or preference rights (and duties for the fiduciary of the bankruptcy estate) to be administered.

It appears that Debtor may not understand that Congress has made, as a matter of federal law, a determination of the fees that Applicant is entitled/allowed a federal law issue pursuant to 11 U.S.C. § 329. If Debtor has a dispute as to what are the terms of the agreement, that good faith dispute is to be promptly and efficiently litigated in this court. While Debtor may file other complaints, that does not override 11 U.S.C. § 329.

With the settlement with Ms. Machado that documents the vesting of title in the Property in the bankruptcy estate for the Debtor appears to have obviated the need for a Chapter 13 plan - so long as the settlement is consummated.

August 11, 2020 Hearing

A review of the file indicates that nothing further has been filed by Debtor in prosecuting this case since April 2020, when this Motion was filed.

In the Adversary Proceeding, the court's order granting summary judgment was entered July 17, 2020.

At the hearing, no appearance was made by counsel or any of the parties.

At the prior hearing on July 1, 2020, Applicant and Debtor reported that an agreement had been reached for the amount of Applicant's fees. The Court continued the hearing to allow that agreement to be documented and filed with the court. None has been filed.

August 25, 2020 Hearing

At the hearing, **xxxxx**

2. **20-23738-E-13 PGM-1** **KIMBERLY GORDON** **Peter Macaluso** **MOTION TO EXTEND AUTOMATIC STAY** **8-10-20 [10]**

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

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)©.

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 August 10, 2020. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

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

The Motion to Extend the Automatic Stay is granted.

Kimberly Marie Gordon ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 18-24096) was dismissed on July 27, 2020, after Debtor failed to make plan payments. *See* Order, Bankr. E.D. Cal. No. 18-24096, Dckt. 43, July 27, 2020. 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 the increase in her plan payment was not manageable for her.

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)©.

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

A. Why was the previous plan filed?

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

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

Debtor has sufficiently demonstrated the case was filed in good faith/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 Kimberly Marie Gordon ("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.

3.	**20-23058-E-13** **DPC-1**	**ERNEST CRUZ** **Mohammad Mokarram**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **7-29-20 [17]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on July 29, 2020. 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.

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

A. Debtor has not filed tax returns.

DISCUSSION

Trustee's objections are well-taken.

Failure to File Tax Returns

According to Proof of Claim 1-1 filed by the Franchise Tax Board, Debtor appears to have failed to file state tax return for the 2017 and 2019 tax years. Proof of Claim 1-1, at 5. Filing of the return is required. 11 U.S.C. §§ 1308, 1325(a)(9). Failure to file a tax return is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

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

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

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

4. **20-23404-E-13 MET-2** **4 thru 5**

KENNETH SMITHOUR
Mary Ellen Terranella

MOTION TO VALUE COLLATERAL OF TRAVIS CREDIT UNION
8-3-20 [21]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on August 3, 2020. By the court's calculation, 22 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 Travis Credit Union ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $6,000.00.

The Motion filed by Kenneth Lee Smithour ("Debtor") to value the secured claim of Travis Credit Union ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 23. Debtor is the owner of a 2004 Lexus RX330 ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $6,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred in July 2016, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $7,590.15. Proof of Claim, No. 5. 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 $6,000.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Value Collateral and Secured Claim filed by Kenneth Lee Smithour ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Travis Credit Union ("Creditor") secured by an asset described as 2004 Lexus RX330 ("Vehicle") is determined to be a secured claim in the amount of $6,000.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $6,000.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

5. **20-23404-E-13 MET-3** | **KENNETH SMITHOUR** **Mary Ellen Terranella** | **MOTION TO VALUE COLLATERAL OF TRAVIS CREDIT UNION** **8-3-20 [26]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditor, and Office of the United States Trustee on August 3, 2020. By the court's calculation, 22 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 Travis Credit Union ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $14,325.00.

The Motion filed by Kenneth Lee Smithour ("Debtor") to value the secured claim of Name of Travis Credit Union ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 28. Debtor is the owner of a 2013 Lexus RX ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $14,325.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on April 2016, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $30,474.37. Proof of Claim, No. 2. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of

$14,325.00, 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 Kenneth Lee Smithour ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Travis Credit Union ("Creditor") secured by an asset described as 2013 Lexus RX ("Vehicle") is determined to be a secured claim in the amount of $14,325.00, 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 $14,325.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

6.	**15-29264-E-13 SS-3**	**BETTY TORRES-SKERRETT Scott Shumaker**	**OBJECTION TO CLAIM OF WELLS FARGO FINANCIAL NATIONAL BANK, CLAIM NUMBER 7 7-24-20 [54]**

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 3007-1 Objection to Claim—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Chapter 13 Trustee, and Office of the United States Trustee on July 24, 2020. By the court's calculation, 32 days' notice was provided. 30 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(2).

The Objection to Claim was properly set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(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 Objection to Proof of Claim Number 7-1 of Wells Fargo Financial National Bank is sustained, and the claim is disallowed as a secured claim, with the entire claim being an unsecured claim in this bankruptcy case.

Betty Margot Torres-Skerrett, Chapter 13 Debtor, ("Objector") requests that the court disallow the claim of Wells Fargo Financial National Bank, now Wells Fargo National Bank West ("Creditor"), Proof of Claim No. 7-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of $16,916.77.

Objector asserts that there is no accompanying documentation showing that an abstract of judgment (or any other document) was recorded in order to obtain a lien for the secured portion of the claim ($14,665.72). Thus, Objector argues, the entire claim amount of $16,916.77 must be treated as a general unsecured claim.

DISCUSSION

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

Proof of Claim

The deadline to file a proof of claim was April 13, 2016. Dckt. 16. Creditor's original proof of claim was filed on March 28, 2016.

Creditor did not file an opposition to the instant motion. However, Creditor filed an amended Proof of Claim on August 3, 2020. Proof of Claim, 7-2. The Claim is now asserted to be an unsecured claim in the amount of $16,916.77.

The court sustains the objection, disallowing Creditor's claim and that is allowed as an entirely unsecured claim.

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 Claim of Wells Fargo Financial National Bank, now Wells Fargo National Bank West ("Creditor"), filed in this case by Betty Margot Torres-Skerrett, Chapter 13 Debtor, ("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 the Objection to Proof of Claim Number 7-1 of Creditor is sustained and Creditor's claim that is the basis of Proof of Claim No. 7-1 is disallowed as a secured claim and the entire claim is a general unsecured claim in this bankruptcy case.
>
> Attorney's fees and costs, if any, shall be requested as provided by Federal Rule of Civil Procedure 54 and Federal Rules of Bankruptcy Procedure 7054 and 9014.

7.	**19-20825-E-13**	**PIOTR/CELESTIAL REYSNER**	**MOTION FOR AUTHORIZATION FOR CALIFORNIA STATE BAR TO RECEIVE FUNDS DIRECTLY FROM NON-DEBTOR 3RD PARTY TO SATISFY DEBTOR'S OBLIGATION**
	SLE-5	**Steele Lanphier**	**8-11-20 [97]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 30, 2020. By the court's calculation, that would provide 117 days notice. 28 days' notice is required. This appears to be a clerical error, with the pleading filed on August 11, 2020, which would allow for fourteen day's notice.

The Motion for Authorization for California State Bar to Receive Funds Directly from Non-Debtor 3rd Party to Satisfy Debtor's Obligation 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 Authorization for California State Bar to Receive Funds Directly from Non-Debtor 3rd Party to Satisfy Debtor's Obligation is granted.

Piotr Gabriel Reysner and Celestial Olivia Reysner ("Debtor") move for an order approving the California State Bar to receive funds directly from non-debtor 3rd party to satisfy Debtor Piotr's obligation.

Debtor Piotr disclosed a debt to the California State Bar for prosecution and client restitution costs in the bankruptcy schedules. Debtor Piotr was a licensed attorney until disbarred in 2011. Debtor Piotr was ordered to pay restitution as part of his disbarment. According to Debtor Piotr, there is a balance of approximately $140,000.00, plus interest.

Debtor would like to reinstate his license and must pay before he can submit his application. Debtor Piotr's parents wish to repay this balance. However, on July 10, 2020, the California State Bar informed Debtor that it would not accept the payment without this court's approval.

Debtor notes that the California State Bar does not accept periodic payments over time and will not accept Debtor's application without repayment in full. Debtor is unable to pay this debt through the plan.

Debtor asserts that if the court denies the request, Debtor will be forced to dismiss the case and re-file at a later date, which may cause an extreme hardship for Debtor as the plan provides for Debtor's vehicle.

In support of this request, Debtor Piotr provides a declaration in which he details the efforts he has taken in order to address the issues that led to his disbarment. Debtor Piotr also testifies to his parents commitment to assist him in obtaining his license back. Debtor Piotr testifies that if they are forced to dismiss the case, they will almost certainly lose their only family vehicle, which is critical for both debtors to continue to go to work and support their family.

DISCUSSION

Debtor has shown that the proposed payment from 3rd parties to the California State bar in that it will resolve that claim and the related issues for the Debtor with the State Bar.

What Debtor does not address is why the Plan is not modified to provide for a lump sum payment to this creditor, with it being paid through the Plan. The confirmed plan in this case has a minimal $282.00 a month plan payment. The original confirmed plan required $960.00 a month. However, under the confirmed Modified Plan in April 2020, the Debtor paid $11,867 through April 2020, which is the fifteenth month of the plan, which averages approximately $791 a month.

However, paying the State Bar through the Plan adds a cost of 10% in Chapter 13 Trustee fees. Due to the amount involved, that would be an additional $14,000.00 to the parents who are attempting to assist the Debtor.

This is an non-standard creditor situation in that the State Bar refuses to accept the payment from the parents unless authorized by the court. Any other creditor would just sell their right to payment to a debt buyer, and walk away from the situation. Given the State Bar's unique status, the reluctant to trade Bar Ordered restitution for dollars may be explainable.

In total, the court determines that granting the Motion is proper to allow the Debtor's parents to "purchase" the obligation of the Debtor to the State Bar.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Authorization for California State Bar to Receive Funds Directly from Non-Debtor 3rd Party to Satisfy Debtor's Obligation filed by Piotr

Gabriel Reysner and Celestial Olivia Reysner ("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.

IT IS FURTHER ORDERED the State Bar of California is authorized to receive funds from Przemyslaw Reysner and Mariola Reysner to pay for prosecution and client restitution and costs as ordered to be paid as part of Piotr Gabriel Reysner's disbarment in State Bar Cases Nos. 10-O03986, 10-O-03987, 10-O-05098, 10-O-9169, 10-O-9170, 10-O-9173, 10-O-9175, 10-O-11357, 10-O-12370, 10-O-13076, 10-O-13533, and 11-O-14079.

8. **19-22211-E-13 MJH-2** **IGNACIO LOPEZ** **Mark Hannon** **MOTION TO CONFIRM PLAN** **7-21-20 [165]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 21, 2020. 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 Amended 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 Amended Plan is xxxxx.

The debtor, Ignacio Gonzalez Lopez ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for monthly plan payments of $4,130.00 commencing August 2020 through month 60, and a 100 percent dividend for unsecured claims totaling $21,000.00. Amended Plan, Dckt. 167. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on August 3, 2020. Dckt. 179. Trustee opposes confirmation of the Plan on the basis that:

A. Class 1 creditor may have received double payments.

B. Total amount paid into the Plan in incorrect.

DISCUSSION

Class 1 Creditor

The Non-Standard Provisions of the proposed Plan state in part: "The Payment to US Bank in class 1 shall commence in August, 2020 through month 60 because debtor has made direct payments to US Bank from filing date through July, 2020."

According to Trustee, his records show having paid a total of $28,715.04 in mortgage payments to US Bank Home Mortgage. The Debtor's Declaration and the non-standard provisions do not specify the months Debtor paid US Bank directly, Thus, it appears that this creditor may have received duplicate payments.

At the hearing, **xxxxxxx**

Total Amount Paid into the Plan

Debtor's Non-Standard provisions states Debtor has paid a total of $41,370, where Trustee's records show that Debtor has paid a total of $43,550.00 into the Plan. Trustee would not object to correcting the total amount in the order confirming plan.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Ignacio Gonzalez Lopez ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Confirm the Amended Plan is **xxxxxx**.

9. **19-24657-E-13 GEL-2** **9 thru 11** | **MICHAEL/BRANDI SMIRL** **Gabriel Liberman** | **CONTINUED MOTION TO MODIFY PLAN** **6-26-20 [51]**

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 26, 2020. By the court's calculation, 46 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The debtor, Michael Jon Smirl and Brandi Victoria Smirl ("Debtor") seek confirmation of the Modified Plan to catch up with plan payments after falling behind due to a drastic reduction of work hours due to COVID-19 but they are now back to working full time. Declaration, Dckt. 53. The Modified Plan provides for monthly payments of $2,125.15 commencing June 2020 for months 11 through 21, followed by monthly payments of $2,274.00 for months 22 through 60, and a 0 percent dividend to unsecured claims totaling $16,906.48. Modified Plan, Dckt. 55. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on July 28, 2020. Dckt. 78. Trustee opposes confirmation of the Plan on the basis that:

A. The plan exceeds the maximum period (60 months) amount allowed under the Bankruptcy Code.

B. Class 1 arrearage amount must be clarified.

C. Debtors have failed to file Supplemental Schedules.

DISCUSSION

Feasibility

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). According to the Chapter 13 Trustee, the Plan will complete in approximately 63 months due to the proposed plan payments only paying $108,461.35, where the amount required to pay creditors is $100,424.15, and Trustee fees will total approximately $10,846.14.

Trustee notes that the plan payments would have to increase by $45.00 for the remaining 49 months or increase the payment by $58.00 beginning in month 22.

Class 1 Arrears

Trustee is unable to fully comply with Section 3.07 of the Plan as the proposed plan states that there is a post-petition arrearage for Class 1 Select Portfolio Servicing in the amount of $4,279.86 but Trustee's accounting shows that the amount due for the unpaid installments is $4,279.80.

The Trustee also notes that there are stated to be $20,335.39 in post-petition arrears to be cured, but that these are actually pre-petition arrears (there appearing to be a clerical error), but that this may be corrected in the order confirming the plan.

Supplemental Schedules

Trustee notes that at the Meeting of Creditors Debtors had informed Trustee that their expenses had been detailed as separate in the prior Schedules because they were in the process of separating. Trustee is uncertain if this information is still accurate as the Declaration in support of the proposed plan states that they have not filed an amended budget on the basis that they are resuming their current confirmed payments and will be able to afford the increased payment in month 22 due to a 401k loan payoff. Moreover, no change of address has been for either debtor.

Trustee asserts that Debtors have failed to show that their plan complies 11 U.S.C. §1325(a)(6).

August 11, 2020 Hearing

At the hearing, the Trustee reported that no payment was made by the Debtor on July 25, 2020. The Trustee concurred that the hearing should be continued to allow Debtor to continue to address these deficiencies in light of their efforts to date.

August 25, 2020 Hearing

At the hearing, **xxxxxx**

10. **19-24657-E-13 RPZ-1** **MICHAEL/BRANDI SMIRL** **Gabriel Liberman** **CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY** **6-29-20 [64]**

U.S. BANK NATIONAL ASSOCIATION

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on June 29, 2020. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

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

The Motion for Relief from the Automatic Stay xxxxx.

U.S. Bank National Association, as Trustee for MASTR Asset Backed Securities Trust 2006-WMC3, Mortgage Pass-Through Certificates, Series 2006-WMC3 ("Movant") seeks relief from the automatic stay with respect to Michael Jon Smirl and Brandi Victoria Smirl's ("Debtor") real property commonly known as 7633 Common Wealth Drive, Antelope, California ("Property"). Movant has provided the Declaration of Maria G. Fritz to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant argues Debtor has not made three (3) post-petition payments, with a total of $4,279.80 in post-petition payments past due. Declaration, Dckt. 66.

TRUSTEE' S RESPONSE

Trustee filed a Response on July 23, 2020. Dckt. 75. Trustee asserts that Debtor is delinquent $6,375.45, where Debtor has paid to date a total of $17,001.20. *Id.* Movant is included in Class 1 of the confirmed Plan and Trustee has a disbursed a total of $11,412.80 to Movant. *Id.* Debtor filed a modified Plan on June 26, 2020, which proposes to add $4,279.86 in post-petition arrearage to Class 1 with a monthly dividend of $85.60. *Id.* The hearing is set for August 11, 2020 and the Trustee has opposed.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on July 29, 2020. Dckt. 81. Debtor asserts that the default is due in part, to being negatively impacted by the COVID-19 pandemic. *Id.* Debtor has filed a modified Plan, which proposes to add $4,279.86 in post-petition arrears to Class 1 with a monthly dividend of $85.60.

Id. See Dckt. 55.

Debtor's Modified Plan and Motion to Confirm were set for 2:00 p.m. the same day as the instant motion for relief.

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be $228,479.23 (Declaration, Dckt. 66), while the value of the Property is determined to be $328,060, as stated in Schedules A/B and D filed by Debtor.

11 U.S.C. § 362(d)(1): Grant Relief for Cause

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

At the continued hearing on August 25, 2020, **xxxxxxxxxx**

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests, for no particular reason, that the court grant relief from the Rule as adopted by the United States Supreme Court. With no grounds for such relief specified, the court will not grant additional relief merely stated in the prayer.

However, the court has continued the hearing, with the consent of the Movant. As such, the court will consider whether waiver of the fourteen days is proper, construing the grounds stated for relief as also being stated as the cause for waiving the stay of enforcement.

Request for Prospective Injunctive Relief

Movant makes an **additional request stated in the prayer**, for which no grounds are clearly stated in the Motion. Movant's further relief requested in the prayer is that this court make this order, **as opposed to every other order issued by the court**, binding and effective despite any conversion of this case to another chapter of the Code. Though stated in the prayer, no grounds are stated in the Motion for grounds for such relief from the stay. The Motion presumes that conversion of the bankruptcy case will

be reimposed if this case were converted to one under another Chapter.

As stated above, Movant's Motion does not state any grounds for such relief. Movant does not allege that notwithstanding an order granting relief from the automatic stay, a stealth stay continues in existence, waiting to spring to life and render prior orders of this court granting relief from the stay invalid and rendering all acts taken by parties in reliance on that order void.

No points and authorities is provided in support of the Motion. This is not unusual for a relatively simple (in a legal authorities sense) motion for relief from stay as the one before the court. Other than referencing the court to the legal basis (11 U.S.C. § 362(d)(3) or (4)) and then pleading adequate grounds thereunder, it is not necessary for a movant to provide a copy of the statute quotations from well known cases. However, if a movant is seeking relief from a possible future stay, which may arise upon conversion, the legal points and authorities for such heretofore unknown nascent stay is necessary.

As noted by another bankruptcy judge, such request (unsupported by any grounds or legal authority) for relief of a future stay in the same bankruptcy case:

> [A] request for an order stating that the court's termination of the automatic stay will be binding despite conversion of the case to another chapter unless a specific exception is provided by the Bankruptcy Code is a common, albeit silly, request in a stay relief motion and does not require an adversary proceeding. Settled bankruptcy law recognizes that the order remains effective in such circumstances. Hence, the proposed provision is merely declarative of existing law and is not appropriate to include in a stay relief order.
>
> Indeed, requests for including in orders provisions that are declarative of existing law are not innocuous. First, the mere fact that counsel finds it necessary to ask for such a ruling fosters the misimpression that the law is other than it is. Moreover, one who routinely makes such unnecessary requests may eventually have to deal with an opponent who uses the fact of one's pattern of making such requests as that lawyer's concession that the law is not as it is.

In re Van Ness, 399 B.R. 897, 907 (Bankr. E.D. Cal. 2009) (citing *Aloyan v. Campos (In re Campos)*, 128 B.R. 790, 791–92 (Bankr. C.D. Cal. 1991); *In re Greetis*, 98 B.R. 509, 513 (Bankr. S.D. Cal. 1989)).

As noted in the 2009 ruling quoted above, the "silly" request for unnecessary relief may well be ultimately deemed an admission by Movant and its counsel that all orders granting relief from the automatic stay are immediately terminated as to any relief granted Movant and other creditors represented by counsel, and upon conversion, any action taken by such creditor is a *per se* violation of the automatic stay.

August 25, 2020 Hearing

At the continued hearing, **xxxxxx**

11. **19-24657-E-13 DPC-2** **MICHAEL/BRANDI SMIRL** **Gabriel Liberman** **CONTINUED MOTION TO DISMISS CASE** **6-3-20 [44]**

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on June 3, 2020. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion to Dismiss is xxxxx.

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtors, Michael Jon Smirl and Brandi Victoria Smirl ("Debtor"), are $6,375.45 delinquent with monthly plan payments of $2,125.15.

DEBTOR'S RESPONSE

Debtor filed a Response on June 16, 2020. Dckt. 48. Debtor states the delinquency occurred due to a loss of income resulting from the COVID-19 pandemic. Declaration, Dckt. 49. Debtor intends to file a modified plan to extend the length of the plan under the CARES Act prior to the hearing date.

DISCUSSION

Debtor is delinquent in plan payments. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

A hearing on a motion to confirm a modified plan is scheduled. The Trustee agreed to a continuance of a hearing on the Motion to Dismiss.

August 11, 2020 Hearing

At the hearing, the Trustee agreed to continue the hearing in light of the Debtor working to address the plan confirmation issues.

August 25, 2020 Hearing

At the continued hearing, xxxxxx

12. **19-27459-E-13** **CYNTHIA ROSS**
MWB-3 **Mark Briden**
12 thru 13

MOTION TO AVOID LIEN OF FORD MOTOR CREDIT LLC AND/OR MOTION TO RELEASE ABSTRACT OF JUDGMENT IMPAIRING EXEMPT PROPERTY
7-23-20 [62]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on July 23, 2020. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Ford Motor Credit Company LLC ("Creditor") against property of the debtor, Cynthia Leeann Ross ("Debtor") commonly known as 5900 Bell Road, Redding, California ("Property").

Trustee filed an Opposition on the basis that where Debtor's Declaration states that Debtor is disabled and entitled to the $175,000 home exemption, Debtor's original Schedule C cites to California Code of Civil Procedure § 704.730 but exempted only $161,601.46. Dckt. 77. Taking this into account and the Property being valued at $300,000 with a superior lien of $28,118.54, a net equity of $10,280.00 exists that may be applied to the judgment. *Id.*

On August 12, 2020, Debtor, in turn filed an Amended Schedule C to add the $175,000 exemption allowed under California Code of Civil Procedure § 704.730. Dckt. 82. This is the valuation applied by the court.

A judgment was entered against Debtor in favor of Creditor in the amount of $9,349.47. Exhibit 2, Dckt. 64. An abstract of judgment was recorded with Shasta County on September 10, 2010, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $300,000.00 as of the petition date. Dckt. 11. The unavoidable consensual liens that total $138,198.54 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 11. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of $175,000.00 on Amended Schedule C. Dckt. 82.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor's exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT-DRAFTED ORDER

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Cynthia Leeann Ross ("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 judgment lien of Ford Motor Credit Company LLC, California Superior Court for Shasta County Case No. 10CV0211, recorded on September 3, 2010, Document No. 2010-0026809, with the Shasta County Recorder, against the real property commonly known as 5900 Bell Road, Redding, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

13. **19-27459-E-13** **CYNTHIA ROSS** **MOTION TO SELL**
MWB-4 **Mark Briden** **7-23-20 [67]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on July 23, 2020. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion to Sell Property is granted.

The Bankruptcy Code permits Cynthia Leeann Ross, Chapter 13 Debtor, ("Movant") to sell property 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 5900 Bell Road, Redding, California("Property").

The proposed purchaser of the Property is Pat Harrison and Babylin Harrison, and the terms of the sale are:

A. Purchase price of $300,000.00.

B. Initial deposit of $2,000.00

C. Close of escrow within 60 days of acceptance.

D. Buyer and Seller to split 50/50 payment of the following: escrow fee, owner's title insurance policy, county transfer fee, and city transfer fee.

CREDITOR'S NON-OPPOSITION

Nationstar Mortgage LLC d/b/a Mr. Cooper ("Creditor") filed a Non-Opposition on July 31, 2020. Dckt. 73. Creditor has no opposition to Debtor's Motion for Sale of Property so long as the lien of Creditor is paid off in full satisfaction of the debt.

TRUSTEE'S RESPONSE

Trustee filed a Response on August 18, 2020. Dckt. 85. Trustee does not oppose the sale but requests the court include five additional terms in the Order to approving the sale:

a. Trustee to approve any Title Company used in connection with the escrow.

b. Escrow is not permitted to close without Trustee submitting a demand to the title company that complies with the Chapter 13 Plan, or waives his right in writing.

c. Debtor is required to provide Trustee with all of the contact information for the Title Company upon opening of escrow.

d. Trustee to approve the final closing statement prior to any close of escrow.

e. If any of these conditions are not met or Trustee cannot participate in the escrow in a way that complies with the Chapter 13 Plan, Trustee can submit an Ex Parte Application to the court explaining the issues and requesting that the motion to sell be denied.

DISCUSSION

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because it will allow Debtor to pay all liens of record and complete her plan.

Though not reference in the Motion, the Purchase Agreement filed as Exhibit A (Dckt. 69) makes reference to real estate agents for both the seller and the buyer. The court has not authorized the employment of a real estate broker by the Debtor and as of this time there is no commission authorized to be paid, and therefore no commission to be divided between the Buyer's broker and the Seller's broker. It appears that the Debtor will need to hustle and get on file a motion for authorization to employ a professional - the real estate broker.

The court shall order that an amount equal to 6% of the gross sales price shall be held in escrow until the Chapter 13 Trustee confirms that such monies may be disbursed between the real estate brokers as provided in the Purchase Agreement, or that such monies are to be disbursed to the Chapter

13 Trustee, to be held pending further order of the 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 Sell Property filed by Cynthia Leeann Ross, 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 Cynthia Leeann Ross, Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Pat Harrison and Babylin Harrison or nominee ("Buyer"), the Property commonly known as 5900 Bell Road, Redding, California ("Property"), on the following terms:
>
> A. The Property shall be sold to Buyer for $300,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit 1-3, Dckt. 69, 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. The sum of $18,000.00 shall be held in the sale escrow after closing pending instructions from the Chapter 13 Trustee to the escrow for the disbursement of the monies to the real estate brokers as identified in the Purchase Agreement, and if such amount is less than $18,000.00, the remaining amount to the Debtor, or the Chapter 13 Trustee instructs the escrow to disburse the $18,000.00 to the Chapter 13 Trustee, who shall hold the monies pending further order of the court.
>
> D. Chapter 13 Debtor is authorized to execute any and all documents reasonably necessary to effectuate the sale.
>
> E. After payment of the above authorized expenses and holding the $18,000.00 in escrow for possible real estate broker commissions, the Escrow , the next monies shall be disbursed directly from escrow to the Chapter 13 Trustee in the amount of his demand for payment, with such demand to be for the amount the Trustee determines necessary to complete the Chapter 13 Plan in this case. In the event of a dispute in the amount demanded by the Trustee, the escrow shall disburse the amount to the Chapter 13 Trustee as demanded, and any dispute shall be presented by the party asserting the dispute to this court.

F. After payment of the above amounts, any remaining net sales proceeds shall be disbursed directly to Cynthia Ross, the Debtor, directly from escrow.

14. 20-22871-E-13 DPC-1 14 thru 15 | **DOUGLAS/KIM JACOBS Scott Shumaker** | **OBJECTION TO DISCHARGE BY DAVID P. CUSICK 7-27-20 [35]**

Final Ruling: No appearance at the September 1, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on July 31, 2020. By the court's calculation, 25 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 P. Cusick, the Chapter 13 Trustee, ("Objector") objects to Douglas Paul Jacobs and Kim Marie Jacobs' ("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 September 19, 2017. Case No. 17-26211. Debtor received a discharge on June 2, 2020. Case No. 17-26211, Dckt. 103.

The instant case was filed under Chapter 13 on June 4, 2020.

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 June 2, 2020, which is less than four years preceding the date of the filing of the instant case. Case No. June 2, 2020. Dckt. 103. 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. 20-22871), 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 P. 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. 20-22871, the case shall be closed without the entry of a discharge.

15. 20-22871-E-13 DPC-2 — DOUGLAS/KIM JACOBS — Scott Shumaker — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK — 7-29-20 [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.

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 29, 2020. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. Debtor is delinquent in plan payments.

B. Plan will complete in 118 months.

C. There is a clerical error as to the attorney's fees.

D. Plan may not be feasible.

DISCUSSION

Trustee's objections are well-taken.

Delinquency

Debtor is $4,809.53 delinquent in plan payments, which represents one month of the $4,809.53 plan payment. Before the hearing, another plan payment will be due. According to Trustee, the Plan in § 2.01 calls for payments to be received by Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Plan Exceeds 60 months

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to Trustee, the Plan will complete in 118 months due to claims filed for amounts higher than the Debtors scheduled in the plan. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

Attorney Fee

Under Local Bankruptcy Rule 2016(a), compensation paid to attorneys for the representation of chapter 13 debtors is determined according to 2016-1(c), which provides for fixed fees approved in connection with plan confirmation. However, if a party in interest objects, such as the trustee, compensation is determined in accordance with 11 U.S.C. §§ 329 and 330.

Trustee notes that at the meeting of Creditors counsel for Debtor testified that the $7,500 stated in the plan for attorney fees was a clerical error. Trustee does not oppose to correcting the attorney fee in the order confirming plan.

Feasibility

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). According to Trustee, at the meeting of Creditors, Debtor testified that she is no longer employed and that Debtors will no longer continue to have a storage expense of $150.00. Trustee requested amended Schedules I and J to reflect correct income and expense information. To date, no amended Schedules have been filed. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is

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

16.	**19-24875-E-13** **SLE-1** **16 thru 18**	**TIMOTHY/ROSA WEST** **Steele Lanphier**	**MOTION TO AVOID LIEN OF BH FINANCIAL SERVICES, INC.** **7-9-20 [33]**

Final Ruling: No appearance at the August 25, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on July 9, 2020. By the court's calculation, 47 days' notice was provided. 28 days' notice is required.

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

This Motion requests an order avoiding the judicial lien of BH Financial Services, Inc. ("Creditor") against property of the debtor, Timothy A. West and Rosa Meria West ("Debtor") commonly known as 1162 W. El Camino Avenue, Sacramento, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $4,066.33. Exhibit A, Dckt. 37. An abstract of judgment was recorded with Sacramento County on June 28, 2019, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $285,200.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total $276,812.00 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(5) in the amount of $8,388.00 on Schedule C. Dckt. 1.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no

equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor's exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT-DRAFTED ORDER

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Timothy A. West and Rosa Meria West ("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 judgment lien of BH Financial Services, Inc., California Superior Court for Sacramento County Case No. 34-2018-00244455, recorded on June 28, 2019, Document No. 201906280622, with the Sacramento County Recorder, against the real property commonly known as 1162 W. El Camino Avenue, Sacramento, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

17. 19-24875-E-13 SLE-2 | TIMOTHY/ROSA WEST, Steele Lanphier | MOTION TO MODIFY PLAN, 7-9-20 [38]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 9, 2020. By the court's calculation, 47 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 xxxxxxxxxx .

The debtor, Timothy A West and Rosa Meria West ("Debtor") seek confirmation of the Modified Plan to cure post-petition arrearage on their home. Declaration, Dckt. 40. The Modified Plan provides for monthly plan payments of $1,860.00 until plan completion, and a 0 (zero) percent dividend to unsecured claims totaling $76,508.45. Modified Plan, Dckt. 42. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on August 6, 2020. Dckt. 45. Trustee opposes confirmation of the Plan on the basis that:

A. Trustee is unable to comply with Section 3.07 of the Plan.

B. Plan fails to account for pre-petition arrearage of secured creditor.

C. Plan relies on two other separate motions.

DISCUSSION

Post-Petition Arrearage

Under Class 1 section of the modified plan Debtor proposes to pay post-petition arrearage on the secured claim of PPH Mortgage Servicing in the amount of $4,689.88.

Debtor identifies PPH Mortgage Servicing as the "creditor" having a Class 1 claim. The Chapter 13 Trustee uses this same identification to be consistent with the Debtor. However, as shown in Proof of Claim 14-1 PPH Mortgage Servicing is not a creditor (11 U.S.C. § 101(10)) with a Class 1 secured claim. Deutsche Bank National Trust Company, as Trustee for Soundview Home Loan Trust 2006-NLC1, Asset-Backed Certificates, Series 2006-NLC1 ("Creditor") is the actual real party in interest creditor in this case. While providing a valuable business service, it appears that PPH Loan Servicing is "merely" a loan servicer for the actual creditor.

Neither Creditor nor its loan servicer are listed on the Master Mailing Matrix filed by Debtor in this case. Dckt. 7.

The Certificate of Service for the present Motion provides the following information for service of Motion to Confirm Modified Plan on Creditor:

> DEUTSCHE BANK NATIONAL TRUST COMPANY
> ROBERTSON, ANSCHUTZ & SCHNEID, P.L.
> 6409 Congress Ave #100
> Boca Raton, FL 33487-2853
>
> Deutsche Bank National Trust Company,
> PHH Mortgage Corporation
> P.O. Box 371458
> Pittsburgh, PA 15250-7458

Dckt. 43 at 3.

For PHH, the PO Box address is not the same one as listed on Proof of Claim No. 14-1 for notices (which "notices" are not the same as service of pleadings as required under Fed. R. Bankr. P. 7004, 9014). Additionally, as the Bankruptcy Appellate Panel has held, service upon a post office box is deficient "service." *Beneficial Cal., Inc. v. Villar (In re Villar)*, 317 B.R. 88, 92-93 (B.A.P. 9th Cir. 2004) (holding that service upon a post office box does not comply with the requirement to serve a pleading to the attention of an officer or other agent authorized as provided in Federal Rule of Bankruptcy Procedure 7004(b)(3)); see also *Addison v. Gibson Equipment Co., Inc., (In re Pittman Mechanical Contractors, Inc.)*, 180 B.R. 453, 457 (Bankr. E.D. Va. 1995) ("Strict compliance with this notice provision in turn serves to protect due process rights as well as assure that bankruptcy matters proceed expeditiously.").

When conducting an online search for entities registered to do business in California on the Secretary of State's website, no entity named Deutsche Bank National Trust Company is identified as registered to do business. [FN. 1]

A review of the FDIC website for federally insured financial institutions does not identify any entity named Deutsche Bank National Trust Company. [FN. 2]

The Dun & Bradstreet website [FN. 3] states that Deutsche Bank National Trust Company is located in California, stating:

> Deutsche Bank National Trust Company is located in CA, United States and is part of the Custodial & Trust Services Industry. Deutsche Bank National Trust Company has 75 employees across all of its locations. There are 4,262 companies in the Deutsche Bank National Trust Company corporate family.

When the court accessed the LEXIS NEXIS corporate information database for information about Deutsche Bank National Trust Company, it is reported that this entity is "inactive:" [FN. 4]

> Filing Number: 000445867
> Name: DEUTSCHE BANK NATIONAL TRUST COMPANY
> Name Type: LEGAL
> Standard Business Address: 300 S GRAND AVE FL 41
> LOS ANGELES, CA 90071-3151
> Original Business Address: 300 GRAND AVENUE FL 41
> LOS ANGELES, CA 90071
> US
> Mailing Address: 300 S GRAND AVE FL 41
> LOS ANGELES, CA 900713151
> US
> Business Type: FOR-PROFIT CORPORATION
> Filing Date: 10/07/1985
> Filing Type: HOME STATE
> Status: INACTIVE - WITHDRAWN
> Status Date: 11/22/2013
> Foreign State of Incorporation: USA
> Place Incorporated: TENNESSEE

The Tennessee Secretary of State website reports that Deutsche Bank National Trust Company status is "inactive-withdrawn."[FN.5]

FN. 1. https://businesssearch.sos.ca.gov/.

FN.2. https://research2.fdic.gov/bankfind/index.html.

FN.3. https://www.dnb.com/business-directory/company-profiles.deutsche_bank_national_trust_company.0e56f1812e22f82986df3c6fb28562f9.html.

FN.4. https://advance.lexis.com/publicrecordshome/?pdmfid=1000200&crid=f2b0fb6b-1f0b-4e1d-aae6-54e023ce83bd

FN.5. https://tnbear.tn.gov/Ecommerce/FilingSearch.aspx

It appears that there is no Deutsche Bank National Trust Company that can be a creditor in this case.

At the hearing, **xxxxxxxxxx**

Plan Relies on Two Separate Motions

Trustee objects on the ground that Debtor's Plan relies on a Motion for Relief from the Automatic Stay and a Motion to Avoid a Judicial Lien. The Motion to Avoid the Judicial Lien was set to be heard the same day as the instant motion. That motion was granted and the lien was avoided in its entirety. Thus, this part of the objection is resolved in favor of the Debtor.

As to the Motion for Relief from the Automatic Stay, **xxxxxxx**

Failure to Cure Arrearage of Creditor

The Trustee also identifies there being a pre-petition arrearage asserted by PHH Mortgage Servicing (actually, the arrearage is for Creditor) on "its" claim. A timely proof of claim has been filed in Creditor's name in which it asserts $3,940.67 in pre-petition arrearage. The Proof of Claim, filed under penalty of perjury states that the arrearage is based on four parts: principal and interest due, pre-petition fees due, escrow deficiency for funds advanced, and projected escrow shortage. Proof Claim, at 4. Debtor has not filed an objection as to this proof of claim.

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

At the hearing, **xxxxxxx**

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

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

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

~~The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Timothy A West and Rosa Meria West ("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.~~

18. **19-24875-E-13 RAS-1** **TIMOTHY/ROSA WEST** **Steele Lanphier** **DEUTSCHE BANK NATIONAL TRUST COMPANY VS.** **CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY** **6-16-20 [21]**

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on June 16, 2020. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion for Relief from the Automatic Stay is xxxxx.

Deutsche Bank National Trust Company, as trustee for Soundview Home Loan Trust 2006-NLC1, Asset-Backed Certificates, Series 2006-NLC1 ("Movant") seeks relief from the automatic stay with respect to Timothy A. West and Rosa Meria West's ("Debtor") real property commonly known as 1162 West El Camino Avenue, Sacramento, California ("Property"). Movant has provided the Declaration of Marilyn Solivan to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

PHH Mortgage Corporation (formerly known as Ocwen Loan Servicing) services the underlying mortgage loan and note for the property referenced in this Motion for Movant.

Movant argues Debtor has not made four post-petition payments, with a total of $4,632.82 in post-petition payments past due. Declaration, Dckt. 23.

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on June 24, 2020. Dckt. 27. The Chapter 13 Trustee asserts that Debtor provides for Ocwen Loan Servicing regarding the Property in Schedule D and Class 4 of the Plan. *See* Dckts. 1, 3. Movant filed a Proof of Claim on October 2, 2019 in the amount of $277,284.93. Proof of Claim, No. 14.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on June 30, 2020. Dckt. 29. Debtor asserts that at the time of petition filing, Debtor was current on mortgage payments and provided for Ocwen Loan Servicing, who held the first deed of trust against the Property in the plan as a Class 4 claim to be paid directly by Debtor.

To cure the delinquent post-petition arrearages, Debtor will file a modified plan and corresponding motion to confirm to change the classification of the debt from a Class 4 to a Class 1, and the plan will provide payment in full for all post-petition arrearages and ongoing mortgage payments. Moreover, Debtor is hopeful that an alternative informal resolution will be reached with Movant as Debtor's counsel has reached out to Movant's counsel to request a continuance of this instant hearing. Movant's counsel has "indicated a willingness to stipulate to a continuance," although not yet formalized.

Alternatively, Debtor assets that there is sufficient equity to protect Movant's interest. The Property was estimated to have a fair market value of $310,000.00 (less cost of sale) at the time of petition filing. Declaration, Dckt. 30. Debtor testifies that home values in Debtor's neighborhood have since increased. *Id.* Debtor estimates the Property's value to currently be at least $330,000.00 based on information obtained from zillow.com and trulia.com, and Debtor's believe that these estimates are an accurate representation of the value of their property. *Id.*; *see* Exhibit 3, Dckt. 24.

July 14, 2020 Hearing

At the hearing the Debtor requested, and Movant concurred with, a continuance of the hearing to August 25, 2020, so that this motion could be heard in conjunction with the Motion to Confirm a Chapter 11 Plan which is represented to the court as resolving Movant's basis for seeking relief from the stay.

August 25, 2020 Hearing

As discussed in connection with the Motion to Confirm Modified Plan, the court cannot identify Movant as an existing entity authorized to do business. The Tennessee Secretary of State website reports that Movant's status is that of "Inactive-Withdrawn."

At the hearing, **xxxxxxxxxx**

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

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

~~The Motion for Relief from the Automatic Stay filed by Deutsche Bank National Trust Company, as trustee for Soundview Home Loan Trust 2006-NLC1, Asset-Backed Certificates, Series 2006-NLC1 ("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 **xxxxxxx**.~~

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

19.	**18-25700-E-13** **DPC-2**	**JONNELL DEEN-CHASE** **Peter Macaluso**	**CONTINUED MOTION TO DISMISS CASE** **6-3-20 [46]**

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 3, 2020. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Jonnell Deen-Chase ("Debtor"), is delinquent in payments in the amount of $4,450.56.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on June 16, 2020, requesting a continuance. Dckt. 50. The Debtor's Declaration filed in support of the Opposition explains that Debtor fell delinquent due to unexpected expenses relating to Debtor's vehicle being stolen and emergency veterinary expenses. Dckt. 51.

DISCUSSION

In light of Debtor's request and the circumstances surrounding Debtor's delinquency, the court shall continue the hearing on this Motion to August 25, 2020 at 2:00pm.

While Debtor requested a continuance to become current in payments, the longer continuance will also allow Debtor to file and set for confirmation hearing a modified plan in the event the

delinquency cannot be cured.

August 25, 2020 Hearing

A review of the Docket on August 22, 2020, disclosed that nothing further had been filed. The Trustee has not sought dismissal of this Motion due to Debtor having cured the default, nor has Debtor filed a modified plan and motion to confirm the modified plan.

The Debtor's inability to prosecute a modified plan, and the Trustee not reporting that Debtor has cured the default in the fifty-two (52) days since the court continued the hearing from the original August 1, 2020 hearing date demonstrates that modification is not achievable in this case. Debtor's affirmative testimony in obtaining the continuance included the following:

> 3. I will be caught up by mid-July. Likely earlier. I will pay $2,273 on Tuesday, 6/16. And can maybe pay the rest of the balance due with my 6/30 paycheck. I would request to be current by mid July if at all possible. I am working as I work for a construction company and we are essential. There is no chance that we will stop working and I truly am working to get caught up.

Declaration, ¶ 3; Dckt. 51.

Unfortunately, it appears that Debtor was not able to get the default cured in early July, later in July, or in the first twenty days of August, and will need to pursue a reorganization, if one is possible, in a new case.

This case was confirmed without a hearing, the Debtor having timely filed the plan and no objection being filed. Thus, the court did not have the opportunity to review Debtor's Schedule J in considering whether the proposed plan was feasible. However, upon review now, it appears that Debtor's financial challenges may be more systemic than an isolated theft of a vehicle and veterinary bill.

On Schedule J Debtor states that her monthly expenses for a family unit of one person average $1,513.68 a month, leaving her with projected disposable income of $2,300 a month to fund a plan. Dckt. 12 at 25-26. Some of the questionable monthly average expenses include:

A. Repairs and Maintenance on Her Home.....($20.00)

B. Food and Housekeeping Supplies.....($300.00)

Assuming $50 a month for housekeeping supplies, that results in there being $250 a month for food (whether at home or dining in a restaurant) for five years, which is $2.77 per meal in a thirty-day month.

C. Entertainment and Recreation.....($21.71)

Twenty "bucks" a month over five years for entertainment and recreation does not appear to be realistic or accurate. In substance, Debtor will have no entertainment or recreation for five years. Also, seeing a number with such odd cents as ($21.71) makes it appear that this is a fictional number created as part of the "fictional" expenses to "justify" a predetermined projected disposable income to create the

appearance of feasibility.

On Schedule A/B, Debtor states under penalty of perjury that she does not have any non-farm animals, such as dogs, cats, or horses. Dckt. 12 at 5. It is unclear how Debtor can have a $1,000 veterinary expense when she states under penalty of perjury that she has no pets.

It appears that Debtor may have more serious issues than merely having defaulted in plan payments.

Cause exists to dismiss this case. The Motion is granted and the case is dismissed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss filed by 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 Motion is granted and this bankruptcy case is dismissed.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on February 29, 2020. By the court's calculation, 59 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014- 1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). 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 denied without prejudice.

June 30, 2020 Status Report

Debtors filed another Status Report stating that their application for a reverse mortgage requires a counseling session, which was not scheduled for several weeks due to staffing reductions resulting from the COVID-19 pandemic. Dckt. 128. Debtors have been waiting for the loan approval, but were informed on June 29, 2020 that the lender wants more information, including a copy of their Chapter 13 petition, plan, and a payment history from the Trustee. *Id*. Due to the COVID-19 related delays, Debtors are considering but hope they will not have to modify their plan to extend beyond the 60 months as provided by the CARES Act. *Id*. Debtors do not want to risk a dismissal after having been in their plan for five (5) years with over $125,000.00 in plan payments. *Id*.

The hearing on the Motion was further continued to August 25, 2020.

May 26, 2020 Status Report

Debtors filed a Status Report stating that they have applied for a reverse mortgage, have obtained their certificate of eligibility for it, and the residence was inspected by an appraiser on May 12, 2020. Dckt. 123. However, Debtors are still waiting for the loan process to be completed and, as of yet,

there is no loan approval. *Id*.

Continuance of April 28, 2020 Hearing

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

REVIEW OF MOTION

The debtors, Richard Jay Cummings and Paula Rae Cummings ("Debtors") seek confirmation of the Modified Plan to address the deficiencies that led to Trustee's Motion to Dismiss due to Debtor Richard's retirement, and now his sole source of income is Social Security in the amount of $2,096.00 per month after retirement funds have been exhausted. Declaration, Dckt. 109. The Modified Plan provides $2,417.00 per month for 52 months, $1,679.00 per month for 7 months, and $28,102.00 per month for 1 month, and a 0% percent dividend to unsecured claims totaling $190,932.00. Modified Plan, Dckt. 108. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S RESPONSE

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response on March 30, 2020. Dckt. 116. Trustee requests that the court take the following into consideration:

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

DISCUSSION

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

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

August 25, 2020 Hearing

Unfortunately, Debtor has not filed any further reports, motions, or other pleadings since the June 30, 2020 filled Status Report. No information is provided as to whether Debtor has diligently prosecuted the counseling session and seeking the reverse mortgage.

The proposed plan Modified Plan, Dckt. 108, requires Debtor to make the following payments:

> $2,417.00 per month for 52 months
> $1,679.00 per month for 7 months
> $28,102.00 per month for 1 month

Dckt. 108. There are no Class 1 secured claims, and in Class 2, the secured claims of Solano County Tax Collector and Wells Fargo Dealer Services. No other secured claims are provided for in the Plan, such as one to be paid from a reverse mortgage. The proposed Modified Plan does not include Debtor obtaining a reverse mortgage to fund the Modified Plan.

As stated in the Motion to Confirm Modified Plan (Dckt. 106), a modified plan was necessary because of the Debtor's defaults under the confirmed plan in this case. As stated by the Debtor:

> 8. The Chapter 13 Trustee filed a Motion to Dismiss Case on or about February 5, 2020 claiming debtor is delinquent in plan payments in the amount of $11,530.00 and another plan payment, in the amount of $2,925.00 will come due prior to the hearing on the motion to dismiss, for a total delinquency through February 25, 2020 of $14,455.00. The debtors did fall behind in their payments, as Mr. Cummings retired from his trucking job in September 2016, after 33 years on the job, at age 66. His sole source of income is Social Security of $2,096.00 per month. The debtors have been struggling to make their plan payment and have exhausted all of Mr. Cummings' retirement to do so. The debtors intend to obtain a reverse mortgage of their home so as to supplement their income and pay off their Chapter 13 plan timely, with the October 2020 payment.

Motion, ¶ 8; Dckt. 106.

This Motion was filed on February 29, 2020. In the one-hundred and seventy-five days since filing the Motion to Confirm the Modified Plan, all that Debtor has done is file a Status Report saying that in June 2020 additional information was required from the lender, and it was provided to the lender in June 2020. Status Report, Dckt. 128. Since then, Debtor has been unable to file any other necessary motions, such as to incur debt on a reverse mortgage or modify the plan to extend the payment of the obligations to be paid thereunder.

While it is unfortunate that Debtor is now floundering on the shoals of monthly payment defaults in the final months of a sixty-month plan, it appears that they are unable to address those defaults.

Additionally, while proposing that there will be a lump sum payment in month sixty of the plan, Debtor does not actually commit in the proposed Modified Plan to obtaining a reverse mortgage to fund the plan. As written, the Debtor could get the money from any undisclosed source of funds or assets.

The proposed modified plan does not comply with the provisions of 11 U.S.C. §§ 1322, 1325, and 1329, and the Motion is denied without prejudice. The proposed Modified Chapter 13 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 Motion to Confirm Modified Chapter 13 Plan filed by Richard Jay Cummings and Paula Rae Cummings, the Chapter 13 debtors, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied without prejudice.

21. 16-25901-E-13 KEISHA RUNNELS MOTION TO INCUR DEBT
TLA-1 Thomas Amberg 7-28-20 [55]

Tentative Ruling: The Motion to Incur Debtor has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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.

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 July 28, 2020. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

Keisha Lashawnn Runnels ("Debtor") seeks permission to purchase real property commonly known as 1924 Delafield Way, Sacramento, California, with a total purchase price of $375,000.00 and monthly payments of $2,379.00 to FHA over an unstated number of years with a 2.875% fixed interest rate.

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement,

"including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." FED. R. BANKR. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

While there is a summary of the terms regarding the FHA loan in the motion and in the declaration, no term sheet, loan confirmation statement, or loan documents were filed in support of the Motion. Rather, the documents provided as Exhibits are for the purchase of the property, not obtaining the loan.

At the hearing, Counsel for the Debtor **xxxxxxxxxx**

~~The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. There being no opposition from any party in interest and the terms being reasonable, the Motion is granted.~~

~~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 Keisha Lashawnn Runnels ("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 Keisha Lashawnn Runnels is authorized to incur debt pursuant to the terms of the agreement, Exhibit A, Dekt. 58.~~

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 5, 2020. By the court's calculation, 39 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is denied.

The debtor, Christa Lynne Hylen ("Debtor") seeks confirmation of the Modified Plan to make up for missed payments due to Debtor and Debtor's spouse both being laid off during the COVID-19 pandemic. Declaration, Dckt. 141. The Modified Plan provides:

A. Monthly plan payments of $100.00 for four (4) months beginning June 25, 2020,

B. followed by monthly plan payments of $665.00 for sixty-three (63) months, and

C. a 0% dividend to unsecured claims totaling $56,822.00.

Modified Plan, Dckt. 142. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on June 24, 2020. Dckt. 146. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor will not be able to comply with plan.

B. Debtor fails to provide her best effort.

C. Debtor's Plan is infeasible as it does not comply with plan provisions.

DISCUSSION

Cannot Comply with Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Trustee has filed and set three (3) previous Motions to Dismiss for delinquent payments. Dckts. 16, 82, 135. Each time, Debtor's response has been to file a modified plan to cure the delinquency. Since the case was filed on November 30, 2018 to May 31, 2020, Debtor has made four (4) payments totaling $2,672.00, but eighteen (18) payments have been due for this duration. Moreover, Debtor has not filed a supplement to Schedule I or J or any supporting documents such as pay advices in support of these Motions to Confirm. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Not Best Effort

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

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

Debtor's Plan proposes monthly plan payments of $100.00 for four (4) months followed by monthly plan payments of $665.00 in October 2020. Debtor states she is able to pay $728.96 per month. Declaration, Dckt. 141. However, Debtor's monthly income has increased by $1,582.85 from her Schedule I filed on December 31, 2019. Debtor's expenses have increased by $710.00 without explanation. Debtor also states that her average monthly income is $3,839.96 and her spouse is receiving $2,400.00. *Id.*

Infeasible Plan

Trustee alleges that the Plan does not comply with § 5.02(a) of the Plan. *See* 11 U.S.C. § 1325(a)(1). The four proposed payments of $100.00 running from June 20, 2020 to September 20, 2020 are insufficient to pay even the $654.71 monthly contract installment on the Class 2 claim. Additionally, the proposed $100.00 monthly payments running from June 20, 2020 to September 20, 2020 are insufficient to pay Trustee's fees (approximately $728.00). Thus, the Plan may not be confirmed.

The Trustee concurred with Debtor's request for a continuance to allow Debtor filed supplemental pleadings to address these issues.

Debtor's Reply

Debtor filed a Reply on August 17, 2020. Dckt. 156. Debtor proposes the following changes to the plan be made in the Order Confirming Plan:

1. Plan payments shall increase $650.00 commencing August 25, 2020 through the life of the plan.

2. Plan length shall be 84 months.

3. Class 2 Creditor American Credit Acceptance payments shall be $581.48 per month.

Debtor also filed Amended Schedules I and J on August 17, 2020. Dckt. 159.

Trustee's Supplement to the Opposition

Trustee filed a Supplement on August 18, 2020 informing the court that Debtor is not current through August 2020 after a $200.00 on July 15, 2020. Dckt. 161. Trustee notes that Debtor did not filed any supplemental pleadings by August 11, 2020. *Id.*

Upon review of this case, the Debtor's substantial defaults, 18 of 22 payments (82% of the required payments), multiple unfulfilled promises to modify the plan to address the defaults, Debtor's response to the Trustee's Opposition merely being a response by Debtor's counsel that the payments will be increased, and the Debtor being unable or unwilling to provide testimony under penalty of perjury to provide the court with evidence to show that such increase would be feasible; the court concludes that modification of the plan and performance thereof is not financially feasible.

Debtor has chosen not to provide any testimony about increasing her expenses to exhaust increases in income. On August 17, 2020, Debtor filed yet another statement of income and expenses under penalty of perjury, designating them as Janus-faced Amended/Supplemental Schedules I and J. Dckt. 159.

For the Amended/Supplemental Schedule I, Debtor states that the non-filing spouse is unemployed, but further states "Starting 8/21/2017 Vik will be on straight commission." Dckt. 159 at 3. "Vik" is not identified. For the non-filing spouse, unemployment compensation of $1,950.00 a month is listed on the Amended/Supplemental Schedule I. *Id.* Given that this bankruptcy case was filed in 2018, it is unclear the relevance of "Vik" being paid on a commission basis in 2017. If this is a typo and "Vik" will start generating commission income in August 2020, no information about what this projected income is for the court to determine whether the Plan is feasible and what projected (forward looking) disposable income is being paid into the Plan.

Debtor has clearly demonstrated that prosecution of a Chapter 13 Plan in this case is not feasible. Debtor has repeatedly defaulted. Hitting the reset button and filing a new case may well be what Debtor needs to do. But merely reenforcing the practice of repeatedly defaulting and now seeking to use a CARES Act extension of time in which to default is not warranted.

The proposed Modified Plan does not comply with 11 U.S.C. §§ 1322, 1325, and 1322, and is not confirmed. The Motion is denied.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Christa Lynne Hylen ("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.

23. **20-20308-E-13 WSS-2 23 thru 25** | **RICHARD DE ROSA** **Steven Shumway** | **MOTION TO CONFIRM PLAN** **7-10-20 [57]**

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 July 10, 2020. By the court's calculation, 46 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Plan is denied.

The debtor, Richard Lee De Rosa ("Debtor") seeks confirmation of the Chapter 13 Plan. The Plan provides for 54 monthly payment of $6,250.00 beginning August 25, 2020, and a 0 (zero) percent dividend to unsecured claims totaling $124,482.00. Plan, Dckt. 60. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on August 5, 2020. Dckt. 62. Trustee opposes confirmation of the Plan on the basis that:

A. Plan fails to account for filed priority claims.

B. Debtor failed to provide business documents.

C. Debtor failed to file Amended Schedules I and J.

D. Debtor's Plan no longer provides for secured creditor and Schedule J

does not list expense for home ownership of residence.

E. Plan relies on pending motion.

DISCUSSION

Failure to File Business Documents Required by Schedule I

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.

Moreover, Debtor's Declaration in support of the Modified Plan states that amended Schedules I and J would be filed as part of the motion. Dckt. 59. A review of the docket shows that no such amended documents have been filed.

Debtor's Reliance on Motion to Avoid Lien

A review of Debtor's Plan shows that it relies on the court avoiding the judicial lien of Sierra Crossing Homeowners Association. Debtor filed the Motion to Avoid Lien to be heard the same date as the instant motion. The court granted Debtor's motion and avoided the lien in its entirety. Thus, this objection is resolved in favor of Debtor.

Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor's Plan will not complete within the 60 months proposed as Debtor estimates $50,000 for priority claims where the Internal Revenue Service has filed Proof of Claim 2 in the amount of $266,767.00 priority, $200,676.90 secured.

Motion to Approve Loan Modification

Specialized Loan Servicing, LLC as servicer for The Bank of New York Mellon FKA The Bank of New York, as Trustee for the certificateholders of the CWABS, Inc., Asset-Backed Certificates, Series 2007-6 ("Creditor") filed a Motion to Approve Loan Modification. The loan modification's terms are: 5.25% interest rate for 30 years with a monthly payment of $2,941.27.

In order to rule on that motion the court reviewed Debtor's Schedules and discovered that Debtor's Schedules did not list a mortgage payment expense. Dckt. 11, p. 24-25. No other related expense such as insurance or property taxes were listed either. *Id.*

Debtor's February 3, 2020 Plan includes Creditor as a Class 1 claim. Dckt. 10. However, Debtor's proposed amended plan fails to list Creditor under Class 1 or Class 4. Trustee points out that Debtor's monthly net income is listed as $6,850, and if Debtor is paying Creditor as a Class 4 creditor, then Debtor's net will be reduced to $3,908.73. This reduction will not allow for Debtor to make his proposed plan payments of $6,250.00

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

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

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

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

24. **20-20308-E-13 KMM-1** **RICHARD DE ROSA** **Steven Shumway** **MOTION TO APPROVE LOAN MODIFICATION** **6-30-20 [43]**

Final Ruling: No appearance at the August 25, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on June 30, 2020. By the court's calculation, 56 days' notice was provided. 28 days' notice is required.

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

The Motion to Approve Loan Modification is granted.

The Motion to Approve Loan Modification filed by Specialized Loan Servicing, LLC as servicer for The Bank of New York Mellon FKA The Bank of New York, as Trustee for the certificateholders of the CWABS, Inc., Asset-Backed Certificates, Series 2007-6 ("Creditor") seeks court approval for Debtor to incur post-petition credit. Creditor, whose claim the Plan provides for in Class 1, has agreed to a loan modification that will reduce Debtor's mortgage payment from the current $3,371.00 per month to $2,941.27 per month over 30 years. The modification will capitalize the pre-petition arrears and provide for a fixed interest rate of 5.25%.

The Declaration of Richard Lee De Rosa ("Debtor") was filed on July 10, 2020. Dckt. 50. The Declaration affirms Debtor's desire to obtain the post-petition financing on the basis that he is $58,158.00 in arrears on the loan. *Id.* The modification will bring the loan current

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Loan Modification filed by Specialized Loan Servicing, LLC as servicer for The Bank of New York Mellon FKA The Bank of New York, as Trustee for the certificateholders of the CWABS, Inc., Asset-Backed Certificates, Series 2007-6 ("Creditor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the court authorizes Richard Lee De Rosa to amend the terms of the loan with Specialized Loan Servicing, LLC as servicer for The Bank of New York Mellon FKA The Bank of New York, as Trustee for the certificateholders of the CWABS, Inc., Asset-Backed Certificates, Series 2007-6 ("Creditor") ("Creditor"), which is secured by the real property commonly known as 3541 Lambeth Drive, Rescue, California, on such terms as stated in the Modification Agreement filed as Exhibit D in support of the Motion (Dckt. 46).

25. **20-20308-E-13 WSS-1** **RICHARD DE ROSA** **Steven Shumway** **MOTION TO AVOID LIEN OF SIERRA CROSSING HOMEOWNERS ASSOCIATION** **7-10-20 [52]**

Final Ruling: No appearance at the August 25, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, creditors, and Office of the United States Trustee on July 10, 2020. By the court's calculation, 46 days' notice was provided. 28 days' notice is required.

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

This Motion requests an order avoiding the judicial lien of Sierra Crossing Homeowners Association ("Creditor") against property of the debtor, Richard Lee De Rosa ("Debtor") commonly known as 3541 Lambeth Drive, Rescue, California ("Property").

In support of the Motion, Debtor filed a Declaration in which he values the Property at $687,000. Dckt. 54.

A judgment was entered against Debtor in favor of Creditor in the amount of $110,489.47. Exhibit A, Dckt. 55. An abstract of judgment was recorded with El Dorado County on August 29, 2019, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $647,000.00 as of the petition date. Dckt. 11. The unavoidable consensual liens that total $662,373.00 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 11. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of $75,000.00 on Amended Schedule C. Dckt. 51.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor's exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT-DRAFTED ORDER

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Richard Lee De Rosa ("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 judgment lien of Sierra Crossing Homeowners Association, California Superior Court for El Dorado County Case No. PC20180219, recorded on August 29, 2019, Document No. 2019-0035762-00, with the El Dorado County Recorder, against the real property commonly known as 3541 Lambeth Drive, Rescue, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

26. **15-26326-E-13 DPC-3** **JILL BETHUNE** **Peter Macaluso** **CONTINUED MOTION TO DISMISS CASE** **6-3-20 [71]**

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on June 3, 2020. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006).

The Motion to Dismiss is xxxx.

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Jill Kay Bethune ("Debtor"), is $2,682.44 delinquent with a monthly plan payment of $1,341.40.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on June 17, 2020. Dckt. 75. Debtor requests for an additional ninety (90) days to complete the plan payments, noting the plan's last month is August 2020.

DISCUSSION

In light of Debtor's request and the circumstances surrounding Debtor's delinquency, the court shall continue the hearing on this Motion to August 25, 2020 at 2:00pm.

While Debtor requested a continuance to become current in payments, the longer continuance will also allow Debtor to file and set for confirmation hearing a modified plan in the event the delinquency cannot be cured.

Debtor's Supplemental Response

On August 19, 2020, Debtor filed a Supplemental Reply requesting additional time of 60 days to make the final payment of $2,746.45, which would complete the Chapter 13 as August 2020 is the 60th and final month of Debtor's Chapter 13 Plan. Dckt. 79. Debtor argues she has been unable to become current within the time frame given by the court at the last hearing due to the steep increase in the Chapter 13 Plan caused by the increase in Debtor's mortgage payment from $825.39 to $1,172.41. *Id.*

August 25, 2020 Hearing

At the hearing, **xxxxx**

27. **18-23515-E-13 DPC-1** | **RAFAEL QUIROZ AND VERONICA** **Peter Macaluso** | **CONTINUED MOTION TO DISMISS CASE** **6-3-20 [60]**

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on June 3, 2020. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006).

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

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Rafael Quiroz and Veronica Valladares-Quiroz ("Debtor"), is $8,667.60 delinquent with plan payments of $2,145.52.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on June 17, 2020, Dckt. 64. Debtor's counsel requests more time to meet with Debtor due to COVID and shelter-in-place orders.

DEBTOR'S SUPPLEMENTAL OPPOSITION

Debtor filed a Supplemental Opposition on June 23, 2020, Dckt. 66. Debtor's counsel reports he has met with Debtor and requests 60 days to file an amended plan.

DISCUSSION

In consideration of Debtor's request and the COVID pandemic, the court shall continue the hearing to August 25, 2020 at 2:00pm. to allow Debtor to prepare and file a modified plan.

August 25, 2020 Hearing

Though the court has provided Debtor the additional time to prosecute this case, as of the preparation of this disposition, Debtor has failed to file a Motion to Confirm Plan and a Modified Plan.

The Motion to Dismiss was filed on June 3, 2020. Dckt. 60. Now, almost ninety (90) days have passed without Debtor addressing the default.

In reviewing the file, the court notes something very odd about Debtor's Declaration filed on June 23, 2020. Dckt. 67. This Declaration has Debtor's counsel in the upper left-hand corner. Debtor's counsel had demonstrated over the years the ability to clearly write, use properly constructed English language sentences, and provide declarations that provide clear testimony.

However, the Debtor's Declaration is written in a manner that it appears to have been written by someone with limited English language skills. Some examples include:

> 2. We have paid a total of $37,359.17 to the Trustee over the last 23 months. We are delinquent with our payments because the **pandemic is affecting me my hotel** (Hyatt Regency Sacramento) was closed on 3/13/2020 but **my situation was affect since December 2019.**

Debtor appears to admit that the economic "problems" date all the way back to December 2019 and that Debtor has been incapable of addressing them over the past eight months.

> 3. Our income was impacted by the COVID-19 pandemic. This **situation** (COVID-19) **was affected since hotel was close on** 3/13/2019. **We have meeting** (virtual meeting) on 6/8/2020, **they say probably reopen on** 6/22/2020, but my department probably on September, **so I did not collect money and is affect all my family**.
>
> 4. Since the reduction of our income, **we have been able to make no payments** to the Chapter 13 Trustee.

It may be that Debtor's counsel would say that the Declaration is a verbatim transcript of the Debtor's response, without Debtor's counsel making any effort to help his client make clear testimony. Or it may be that Debtor's counsel "assigned" to Debtor the responsibility to write whatever declaration Debtor thought legally appropriate and was not involved in the process. Or, it may be that Debtor's counsel assigned the task to a non-lawyer staff member or third-party to interview the client, write

whatever that non-lawyer thought was proper, and then file it using Debtor's counsel's electronic document filing privileges. None of these are good responses.

Debtor having admitted that the events causing the default date back to December 2019 and in the past eight months Debtor being unable to address them, further continuance is not warranted. If Debtor can perform a plan, Debtor can hit the reset button and file a new Chapter 13 case.

Cause exists to dismiss this case. The Motion is granted and the case is dismissed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss filed by 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 Motion is granted, and this Bankruptcy Case is dismissed.

Local Rule 9014-1(f)(1) Motion—Hearing not required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on June 3, 2020. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk* (*In re Eliapo*), 468 F.3d 592, 602 (9th Cir. 2006).

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

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

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Bradley Martin ("Debtor"), is $9,600.00 with monthly plan payments of $3,200.

DEBTOR'S OPPOSITION

Debtor filed an Opposition June 23, 2020. Dckt. 69. Debtor's counsel reported he had yet to meet with Debtor on the matter.

In a Supplemental Opposition, Debtor's counsel reports having met with Debtor, that Debtor intends to file a modified plan, and requesting a 60 day continuance. Dckt. 71.

DISCUSSION

In light of Debtor's request and the circumstances surrounding Debtor's delinquency, the court shall continue the hearing on this Motion to August 25, 2020 at 2:00 p.m.

August 25, 2020 Hearing

In the June 30, 2020 Opposition (Dckt.71) Debtor requested a continuance of sixty (60) days to allow Debtor to diligently prosecute this case and get a Modified Plan and Motion to Confirm filed.

The court accommodated and continued the hearing to August 25, 2020. As of the Court's August 22, 2020 review of the Docket, no Modified Plan or Motion to Confirm have been filed. Though given a continuance, Debtor has not been able to diligently prosecute this case.

Cause exists to dismiss this case. The Motion is granted, and the case is dismissed. If Debtor can diligently prosecute a Chapter 13 case, he can hit the "reset button" and file a new Chapter 13 case, starting with an almost (11 U.S.C. § 362(c)(3)) clean slate. [FN. 1]

FN.1. The court notes that Debtor has had two prior unsuccessful Chapter 13 cases: 17-27655, Dismissed on December 11, 2017; and 18-20162, Dismissed on January 29, 2018.

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 filed by 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 Motion is granted, and the Chapter 13 case is dismissed.

Local Rule 9014-1(f)(1) Motion—Hearing not required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on June 3, 2020. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006).

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

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

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the Debtor, Timothy Schad ("Debtor"), is $41,512.42 delinquent in plan payments.

DEBTOR'S REPLY

Debtor filed a Reply on June 18, 2020. Dckt. 163. Debtor states that COVID-19 has interfered with his income, and therefore with his ability to make plan payments. *Id.* Debtor believes he can cure the arrearage in payments by September. Debtor requests that his plan be extended by three months, a modification which Debtor refers to as "minor," and not necessitating the filing of a Modified Plan.

Alternatively, Debtor seeks a continuance of this Motion to Dismiss to October to allow the Debtor to become fully current on plan payments. *Id.*

DISCUSSION

In light of Debtor's request and the COVID pandemic, the court continued the hearing on this Motion to August 25, 2020 at 2:00p.m.

The continuance will also allow Debtor to file and set for confirmation hearing a modified plan, which under the CARES act's revisions to 11 U.S.C. § 1329 can extend the plan to 7 years.

AUGUST 25, 2020 HEARING

Though the court continued the hearing, no proposed Modified Plan and no Motion to Confirm have been filed as of the court's August 22, 2020 review of the Docket. The $41,512.42 in plan payments as of the June 3, 2020 filing of the Motion to Dismiss (Dckt. 159), which are three months of the required $13,801.38 a month payment, have yet to be addressed.

The Debtor having been given the time requested to diligently prosecute a modified plan, and there being no plan to be prosecuted, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss filed by 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 Motion is granted, and the Bankruptcy Case is Dismissed.

30. **18-25370-E-13** **JESSE ORTIZ** **CONTINUED MOTION TO DISMISS CASE**
DPC-5 **Peter Macaluso** **6-3-20 [130]**

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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.

Local Rule 9014-1(f)(1) Motion—Hearing not required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on June 3, 2020. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006).

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

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the Debtor, Jesse Soto Ortiz ("Debtor"), is $29,100.00 delinquent in plan payments.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on June 17, 2020. Dckt. 134. Debtor's counsel therein reported he had yet to meet with Debtor due to COVID. On June 17, 2020, Debtor filed a Supplemental Opposition reporting Debtor has met with counsel. Debtor requests a 60 day continuance to allow preparation and filing of a modified plan.

DISCUSSION

In light of Debtor's request and the COVID pandemic, the court shall continue the hearing on this Motion to August 25, 2020 at 2:00p.m.

While Debtor requested a continuance to become current in payments, the longer continuance will also allow Debtor to file and set for confirmation hearing a modified plan in the event the delinquency cannot be cured.

AUGUST 25, 2020 HEARING

The court's review of the Docket on August 22, 2020, disclosed that no modified plan and no motion to confirm have been filed.

Unfortunately, Debtor and Counsel have not been able to come forward with a modification to the plan that will allow Debtor to diligently prosecute this case. This is the fourth Chapter 13 case filed by Debtor since February 2011 that Debtor has not been able to successfully prosecute.

Cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss filed by 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 Motion is granted, and the case is dismissed.

31. **19-27175-E-13 PGM-1** | **ADAM/SHERRI NEWLAND** **Peter Macaluso** | **CONTINUED OBJECTION TO CLAIM OF DEUTSCHE BANK NATIONAL TRUST COMPANY, CLAIM NUMBER 4** **3-30-20 [27]**

Local Rule 3007-1 Objection to Claim—Hearing Required.

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

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

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

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

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

Final Cure and Prior Case

Objector states that in the prior Chapter 13 case, 13-31616, Objector completed the prior case and there was a final cure of Creditor's arrearage at that time as provided in Federal Rule of Bankruptcy Procedure 3002.1. Objection, p. 2, § I; Dckt. 27.

DISCUSSION

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party

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

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

Creditor Response

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

Debtor's Response

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

Continuance of June 2, 2020 Hearing

At the hearing Counsel for Debtor suggested to the court that a method for resolving the $23,940.56 arrearage asserted by Creditor and the $20,594.58 asserted by Debtor would be by conducting an evidentiary hearing.

June 9, 2020 Hearing

At the June 9, 2020 Hearing, the Parties identified factual issues for which an evidentiary hearing was necessary and the legal issues outstanding. A further continuance was requested, the parties continuing to work to address the dispute.

July 21, 2010 Hearing

At the July 21, 2020 Hearing, Counsel for the Debtor reported that an agreement as to the amount of the claim, and creditor has filed an amended proof of claim. The only outstanding issue is attorney's fees.

August 25, 2020 Hearing

Nothing further has been filed by the Parties since the court continued the July 21, 2020 hearing. At the August 25, 2020 continued hearing, **xxxxxxxxxx**

32. **20-22375-E-13 JSO-1** **ANTHONY/THELMA BAUTISTA** **Jeanne Serrano** **MOTION TO VALUE COLLATERAL OF VERIPRO SOLUTIONS AND/OR MOTION TO AVOID LIEN OF VERIPRO SOLUTIONS** **7-3-20 [23]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditor, and Office of the United States Trustee on July 3, 2020. By the court's calculation, 53 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of Veripro Solutions ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $0.00, with all other requested relief in the Motion denied without prejudice.

The Motion to Value filed by Anthony Satoya Bautista and Thelma Tagle Bautista ("Debtor") to value the secured claim of Veripro Solutions ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 44. Debtor is the owner of the subject real property commonly known as 546 Henry Street, Vallejo, California ("Property"). Debtor seeks to value the Property at a fair market value of $375,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Debtor offers a Certified Residential Real Estate Appraisal, which states that the Property has a value of $375,000. Exhibit A, Dckt. No declaration from the licensed real estate appraiser is filed to authenticate the offered the appraisal report or provide testimony as to the value of the Property.

Debtor has filed a Supplemental Declaration (Dckt. 44) in which Debtor provides owner opinion testimony that the value of the Property is $375,000.

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

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

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

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

OPPOSITION

Trustee opposes the Motion to Value, reading the Motion as one that not only seeks to value the secured claim, but for the court to void the rights of Creditor in the property securing the Claim. The Trustee is correct, with the grounds stated in the Motion and the relief requested including:

The debt to the first deed of trust holder is no less than $445,289.56, which is more than the value of the property. Since the junior trust deed is wholly unsecured, the lien should be found void and stripped as a lien on the property. Said lien should be treated as unsecured claim unless it is a purchase money obligation.

> WHEREFORE, Moving Parties respectfully request the Court:
> . . .
> (3) To find that the junior deed of trust held by Veripro Solutions is wholly unsecured and has no value;
>
> (4) To find that the junior deed of trust held by Veripro Solutions is void, unenforceable, and of no further force or effect;
> . . .
> (6) The voiding and stripping of Veripro Solutions' Second Deed of Trust is contingent
> only upon Debtors' completion of their Chapter 13 Plan and the Debtors' receipt of a Chapter 13 discharge;
>
> (7) Upon receipt of Debtors' Chapter 13 discharge, Debtors shall record the

> Order to void and strip the lien and the discharge with the County Recorder's Office; . . . .

Motion, p. 1:25, 2:1-18; Dckt. 23.

The Trustee is correct, in that by this Motion Debtor requests that he court not "merely" value the secured claim, but also declare that the Creditor's real property interests are void, and then the court to authorize the Debtor to record this order so as to document the court having voided the real property rights of Creditor by this Motion.

The Debtor does not provide the legal authority for the court to preemptively determine the real property interests of Creditor being void, by doing so in this order that is subject to a condition subsequent, and why it would be proper for the court to authorize the Debtor to record an order that is not final on its face, being subject to a condition subsequent, and how such conditional order should properly be recorded.

Debtor does not explain how the relief in determining that he real property interests of Creditor in the property can be declared void by the present Motion.

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $445,289.56. Amended Schedule D, Dckt. 43. Creditor's second deed of trust secures a claim with a balance of approximately $78,054.78. *Id*. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, the value of the collateral, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

All other relief requested in 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 Value Collateral and Secured Claim filed by Anthony Satoya Bautista and Thelma Tagle Bautista ("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 Veripro Solutions ("Creditor") secured by a second in priority deed of trust recorded against the real property commonly known as 546 Henry Street, Vallejo, California, is determined to be a secured claim in the amount of $0.00, and the balance of the claim is a general unsecured claim to be

paid through the confirmed bankruptcy plan. The value of the Property is $375,000.00 and is encumbered by a senior lien securing a claim in the amount of $445,289.56, which exceeds the value of the Property that is subject to Creditor's lien.

IT IS FURTHER ORDERED that all other relief requested in the Motion is denied without prejudice.

33. 18-25929-E-13 BLG-4 JEFFREY YOUNG

CONTINUED MOTION TO MODIFY PLAN
6-26-20 [91]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 26, 2020. By the court's calculation, 46 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The debtor, Jeffrey Young ("Debtor") seeks confirmation of the Modified Plan on the basis that he has moved to Hawaii for a new job with a salary of $66,002.00, his expenses have changed, and will continue to receive reduced VA benefits. Declaration, Dckt. 93. The Modified Plan provides $1,469.00 to be paid for months 21 through 60, and a 0.0 percent dividend to unsecured claims totaling $37,111.33. Modified Plan, Dckt. 96. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on July 14, 2020. Dckt. 103. Trustee opposes confirmation of the Plan on the basis that:

A. Trustee is uncertain as to the Plan terms under the Nonstandard Provisions.

DISCUSSION

Debtor's Section 7- Nonstandard Provisions provide in part as follows:

As of Month 20 (June 2020)

Debtor has paid $3,225.00 into the plan (Last payment receipt of $1,000.00 on February 10, 2020).

. . .

Section 7.01: Section 2.01

Debtor will pay $1,469.00 per month for months 21-60

Dckt. 96, at p. 7. Trustee notes that June 2020 us actually month 21 of the plan and believes that Debtor meant to state "$3,225.00 total paid in as of Month 21 (June 2020) with payments of $1,469.00 for months 22 (July 2020) – 60." Dckt. 103, at p. 2.

At the August 11, 2020 hearing, no appearance was made by the Debtor. The Trustee requested a continuance, anticipating that the Debtor can address this issue.

August 25, 2020 Hearing

At the hearing, xxxxx

34. 16-21283-E-13 CRAIG MAKISHIMA MOTION TO MODIFY PLAN
CLH-6 Cindy Hill 7-22-20 [152]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 22, 2020. By the court's calculation, 34 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 court *sua sponte* shortens the notice period to the 34 days provided in light of the facts and circumstances surrounding this motion. The court is confident that this was a mere counting error by the staff in Debtor's counsel's office.

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

The Motion to Confirm the Modified Plan is denied.

The debtor, Craig S. Makishima ("Debtor") seeks confirmation of the Modified Plan to allow additional months to market his dental practice, obtain a sale and pay off the remainder of the plan off with a lump sum payment. Declaration, Dckt. 155. The Modified Plan provides for monthly plan payments of $1,428.80 from August 2019 through March 2021, and a 0 (zero) percent dividend to unsecured claims totaling $367,688.00. Modified Plan, Dckt. 154. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on August 6, 2020. Dckt. 157. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor is delinquent in plan payments

B. Debtor fails to provide information regarding lump sum payment as part of the proposed plan.

C. Debtor used the wrong plan form.

DISCUSSION

Delinquency

The Chapter 13 Trustee asserts that Debtor is $10,900.80 delinquent in plan payments, which represents multiple months of the $1,428.80 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Feasibility

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Section 6.02 of the proposed plan states:

> The Debtor shall pay an amount sufficient to pay the remainder of the secured claim of the IRS and an amount sufficient to pay all creditors as proposed, in a lump sum as a one time a payment made by Debtor from proceeds from Debtor's Corporation's sale of its assets and business. Said sale shall occur by June 2021 or if further Covid shut downs occur within 6 months after the state is continuously reopened to stage 4 and the Corporation is permitted to open and continuously operate, but no later than February 28, 2022. If the lump sum payment is made after March 2021, the final monthly payment shall be made in the same month the lump sum payment is made, and plan payments shall be complete.

Plan, at 7.

The Plan may not be feasible where Debtor proposes a lump sum payment sufficient to pay all creditors without specific terms such as amount or due date. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

In considering feasibility, the court looks to the existing confirmed plan in this case and what Debtor committed to do, and then the evidenced as to why the modification is necessary. Debtor confirmed the Corrected Second Amended Chapter 13 Plan (Dckt. 52) on February 2, 2017 (Order, Dckt. 68). The hearing at which the court stated that the motion to confirm was granted was conducted on December 20, 2016. Civil Minutes, Dckt. 65. The order granting the Motion to Confirm the Corrected Second Amended Plan was entered the next day on December 21, 2016. Dckt. 67. The order granting the Motion which was entered on the Docket on December 22, 2016, includes the direction that "counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court." *Id.* Though the motion was granted on December 22, 2016, the proposed order confirming the plan was not lodged with the court until February 1, 2017, and the order confirming the plan was entered on February 2, 2017. Order, Dckt. 68.

The confirmed plan requires that Debtor make monthly payments of $5,086 for April and May

2016, then for June through August 2016 the monthly payment is was $6,400. Then, for September and October 2016 the payment was $7,736 a month, and finally for the remaining fifty-three (53) months of the plan the payments were $6,236 a month. Second Corrected Plan, Dckt. 52 at 6.

The Debtor then modified the plan, with the court confirming (Confirmation Order, Dckt. 139) the Third Modified Plan (Dckt. 130) that had been filed on August 19, 2019. Plan was modified to require that for the period of April 2016 through July 2019, the Debtor has paid in $215,452 into the Plan. The Debtor will continue to make monthly payments of $1,428.80 per month for the remaining months of the sixty (60) months of the Plan. Dckt. 130 at 7.

Debtor's testimony in support of the modification includes an explanation of a significant medical condition and Debtor's negotiations in 2019 to sell his dental practice. Declaration, ¶¶ 3-4; Dckt. 125. Debtor discusses that it has been difficult to obtain someone to pay "fair market value," but that Debtor anticipated that he would have it sold in the next two to six months from the date of the Declaration, with the outside date being October 2019. Declaration, ¶¶ 5-6; *Id.* The entity selling the dental practice is Debtor's corporation.

Since confirmation, there have been four motions to dismiss for which the basis for the defaults were alleged to be:

Motion, DPC-3, October 2, 2017, Dckt. 99.....$12,472.00 default in payments

Motion, DPC-4, January 19, 2018, Dckt. 109.....$ 6,236.00 default in payments

Motion, DPC-5, July 19, 2019, Dckt. 118.....$24,944.00 default in payments

Motion, DPC-6, June 3, 2020, Dckt. 141.....$140,076.80 default in payments

On June 3, 2020, the Trustee filed the above fourth motion to dismiss this case due to the Debtor's default of $140,076.80. Dckt. 141. This was three months after the outside date that Debtor represented in August 2019 that he would have the dental practice sold. Debtor responded with a Counter Motion by which Debtor sought to extend the time for the significantly delinquent lump sum payment - which would be a plan modification. Dckt. 145. But Debtor did not seek to modify the plan, just extend time. In the Counter Motion, Debtor sought to change the plan terms and require that the lump sum not be due until December 2020, almost a year after the outside date of when Debtor committed to have the sale done.

The court denied the Counter Motion and denied without prejudice the Motion to Dismiss. Orders, Dckts. 151, 150.

A review of the court's Docket indicates that Debtor has not engaged the services of a broker for the sale of the business. In the present Motion, Debtor's counsel recites that a business broker was retained and in November 2019 discussions ensued, but in December 2019 "the purchaser walked away from the sale." Motion ¶ 6; Dckt. 152. The Debtor stated in August 2019, and clearly knew that a sale was necessary before that time, but it is not until December 2019 that there appear to be serious discussions on the sale.

It is telling that the Motion merely states that the "purchaser walked away," and does not provide any grounds as to why the purchaser walked away, or what efforts were made to diligently sell the practice for a commercially reasonable price. No information is provided to show whether it was just a bad market for the sale of a dental practice, or that Debtor's demands for a sales price and other conditions for his benefit were commercially unreasonable to a good faith purchaser.

In Debtor's current Declaration, he testifies that he initially sought to sell his practice without hiring a broker. Declaration, ¶ 5; Dckt. 155. Nothing in the Declaration is provided for how the Debtor believed that he had the requisite business and marketing skills to sell such a valuable asset. With respect to the buyer who "walked away" in December 2019, all that the Debtor testifies to is that "she [the prospective purchaser] advised me that the time table I had for the sale didn't work for her . . . ." Declaration, ¶ 6; *Id.* Debtor offers no insight into what his time table was for the sale - which should have been an immediate sale.

Debtor then states that he hired a business broker. No authority to employ a professional or to pay a professional for any such services was filed, and no order obtained. Then, the February 2020 deadline having expired, Debtor's ability to have the business marketed was stalled due to the COVID-19 pandemic.

Debtor then testifies that he wants to have the extension work in a way that notwithstanding whatever COVID-19 issues may arise, Debtor can have an open-ended "COVID safety value" allowing a full continuous six months of marketing time. Declaration, ¶ 8; *Id.*

The proposed Modified Plan continues to provide for curing the substantial arrearage on Debtor's residence ($50,000) and Debtor's nondischargeable priority tax debt of more than one-half a million dollars. Debtor still provides a 0.00% dividend for his almost $400,000 in general unsecured claims creditors.

The court further notes that Debtor has failed to file any supplemental Schedules I and J, providing the court and parties in interest with his current income and expense information. The August 2019 Supplemental Schedule I lists Debtor having only $10,500 in disability insurance income and $1,600 in Social Security Benefits, and no income from the dental practice. Dckt. 126 at 2-4. Thus, it would appear that the dental practice has been dormant since the Summer of 2019 - now more than one year.

On Supplemental Schedule J Debtor exhausts more than 50% of this substantial disability income with a ($5,954.20) currently monthly mortgage payment. *Id.* at 5. The plan does not include any amount for the ($18,845,00) pre-petition arrearage asserted in Proof of Claim 3-1 for the obligation secured by the first deed of trust.

The Debtor's Plan then requires monthly payments on the disputed secured claim of DiTech (second deed of trust on Debtor's residence), a current monthly payment of ($369) and a pre-petition arrearage cure payment of ($833) (for a stated $50,000 pre-petition arrearage on the obligation secured by the second deed of trust). Plan ¶ 2.08; Dckt. 154.

Supplemental Schedule J includes other necessary expenses for the Debtor to maintain this chosen residence, which include: ($200) for insurance, ($150) for repair and upkeep, ($153) for HOA dues, and ($150) for pool and Terminix. Dckt. 126 at 5-6. Thus, to maintain his residence lifestyle, the

first $7,809.00 each month (not including any pre-petition arrearage on the claim secured by the first deed of trust) goes to just maintaining Debtor's choice of residence. This is 64.5% of Debtor's gross household monthly income.

When Debtor filed this case in March 2016, he listed this residence property to have a value of $770,000. Schedule A/B; Dckt. 1 at 13. Proof of Claim No. 3-1 filed by Deutsche Bank National Trust Company, as Trustee, asserts a secured claim in the amount of ($680,680.33).

Ditech Financial filed Proof of Claim 5-1 asserting a secured claim of ($150,525), which it is noted is disputed, stating "Debtor disputes claim; predecessor has second DOT." POC ¶ 9. This Proof of Claim has not been amended and no objection to Proof of Claim No. 5-1 has been filed by Debtor.

Thus, Debtor's residence choice requires a cash outflow each month of at least ($7,809) for a property in which there is no equity (given that Debtor has not objected to and DiTech has not amended Proof of Claim No. 5-1).

Wrong Plan Form

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.

In considering the present Motion and the evidence presented, which includes the files in this case, the court concludes that Debtor cannot perform the proposed plan. It is indisputable that Debtor has suffered some terrible life events. But what Debtor has demonstrated is that his business and financial choices are not based on commercially reasonable, good faith, financially sound considerations, but merely that Debtor does what he is going to do.

It is telling that Debtor, a dentist, presumably wanting to seek the highest sales price for the dental practice chooses to market and try to sell the practice himself, and not hire a broker. Then, when that fails and dismissal is knocking at the door, he professes to hiring a broker to sell the asset, but authorization to have one employed is never obtained.

Then, Debtor only offers cryptic explanations as to why for well over a year he has been unable to sell the practice. It appears that Debtor has been disabled from the practice since before the summer of 2019, having only disability insurance and Social Security as his income. Debtor's only reason for one buyer walking away from the sale was that the buyer did not like the "time line" that Debtor was imposing. Was the time line to have the sale close in thirty-days? Was the time line that the sale would take place over 20 years and that the buyer would pay Debtor $50,000 a month without regard to Debtor's ability to practice dentistry?

Debtor has been represented by a well known, experienced bankruptcy attorney, so the reason cannot fall at the lap of counsel for not advising Debtor of his obligations and the reality of seeking extraordinary relief under the Bankruptcy Code.

The term of the proposed Fourth Modified Plan is stated to be 60 months. Plan, ¶ 1.02; Dckt. 154. In the Additional Provisions, Debtor provides for making a monthly plan payment of $1,428.80

(which is only 18% of the monthly cost for Debtor to maintain his residence of choice) for August 2019 through March 2021. Additional Provision ¶ 6.01; Dckt. 154 at 7.

The additional terms continue stating that Debtor's sale of the dental practice will occur by June 2021 - which is three months after the last plan payment by the Debtor, and that June 2021 is not actually the deadline, with it being extended further until February 28, 2022. Additional Provision, ¶ 6.02; *Id.*

With this bankruptcy case having been filed on March 1, 2016, and extending the deadline to February 28, 2022, the Debtor will have enjoyed bankruptcy protection for six years, with little action other than maintaining his residence of choice and trying to extract conditions from a sale that cause a serious buyer to walk away in December 2019.

The proposed plan is not feasible in that Debtor has demonstrated that he cannot sell the dental practice. The best financial information the court has is Debtor is disabled, and notwithstanding that disability is spending more than 64.5% of the disability income to maintain his residence of choice. That does not present the court with a person with the business and financial acumen to market and sell a business asset.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Craig S. Makishima ("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.

35. **18-25291-E-13 JMC-1** **RONALD/PATRICIA LUDINGTON** **Joseph Canning** **MOTION TO MODIFY PLAN** **6-30-20 [26]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 30, 2020. By the court's calculation, 56 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is denied.

The debtors, Ronald James Ludington and Patricia Ann Ludington ("Debtor") seek confirmation of the Modified Plan to account for a higher than anticipated amount in mortgage arrearage. Declaration, Dckt. 30. The Modified Plan provides for monthly payments of $1,790.00 for 22 months, followed by $2,208.00 for 38 months, and a 100 percent dividend to unsecured claims totaling 19,793.00. Modified Plan, Dckt. 27. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on August 6, 2020 Dckt. 34. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor is delinquent in plan payments.

B. The Plan exceeds the proposed 60 months.

C. Debtor has not filed supplemental Schedules I and J.

DISCUSSION

Delinquency

The Chapter 13 Trustee asserts that Debtor is $200.00 delinquent in plan payments, which represents a fraction of the $2,208.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Failure to Complete Plan Within Allotted Time

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 63 months due to Debtor's proposed payments will total $81,696.00, where $75,247.32 is required to pay creditors and Trustee fees are approximately $8,169.60. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

Supplemental Schedules I and J

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor proposes plan payments of $1,790.00 for 22 months followed by plan payments of $2,208.00 for 38 months. Debtor's last schedules I and J, filed August 2018, indicate a monthly net income of $1,790.00. Debtor's Declaration states that "the payments are close to the most that we can afford to pay," but fails to explain how they will be able to afford payments of $2,208.00. See, Dckt. 30, at 2. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Ronald James Ludington and Patricia Ann Ludington ("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.

36. **19-21794-E-13** **VALENTINA MORGAN** **MOTION TO MODIFY PLAN**
MRL-1 **Mikalah Liviakis** **6-14-20 [36]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 15, 2020. By the court's calculation, 71 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 xxxxx.

The debtor, Valentina Morgan ("Debtor") seeks confirmation of the Modified Plan because Debtor's prior employment was interrupted due to the COVID-19 related shutdown and she was forced to find new employment. Declaration, Dckt. 38. The Modified Plan provides for monthly plan payments of $2,082.00 for 14 months, followed by monthly plan payments $2,350.00 for 70 months, and a 7 percent dividend to unsecured claims totaling 22,953.00. Modified Plan, Dckt. 40. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on August 7, 2020. Dckt. 53. Trustee opposes confirmation of the Plan on the basis that:

B. Debtor is delinquent in plan payments.

DISCUSSION

Trustee seeks clarification of Trustee's payment in month 17 of a $130.40 dividend that has

previously disbursed under the confirmed Plan. The plan ratifies distributions for class 2 Santander Consumer, and as the Trustee understands the modified plan calls for payments of $100.02 forward and does not alter the prior payments.

At the hearing, **xxxxxxx**

Additionally, Trustee notes that though Debtor is currently seeking modification due to hardship related to COVID-19, Debtor had been delinquent $5,783.51 prior to the stay at home order related to COVID-19. Trustee's believes the delinquency was due to step payments called for by the original plan.

Delinquency

The Chapter 13 Trustee asserts that Debtor is $259.46 delinquent in plan payments, which represents a fraction of the $2,350.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Valentina Morgan ("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 **xxxxxx**

37. **16-25411-E-13 SG-2** **37 thru 38** | **CANDACE WARD-PORTER** **Shareen Golbahar** | **AMENDED MOTION TO MODIFY PLAN** **7-17-20 [49]**

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 July 17, 2020. By the court's calculation, 39 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is denied.

The debtor, Candace Jean Ward-Porter ("Debtor") seeks confirmation of the Modified Plan to catch up with plan payments after falling behind due to an increase in mortgage payments due to property taxes and the mortgage loan being an interest only that was due to increase at month 30. Declaration, Dckt. 42. The Modified Plan provides for:

1. One plan payment of $2,730.16 for the month of June 2020,

2. $6,000.00 from the refinance of Debtor's residence in July 2020 or within three months thereafter,

3. monthly plan payments of $2,995.00 commencing August 2020 through the end of the plan, and

4. a 7 (seven) percent dividend to unsecured claims totaling $31,555.00.

Modified Plan, Dckt. 47. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on August 6, 2020. Dckt. 56. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor is delinquent in plan payments.

DISCUSSION

Delinquency

Debtor is $5,999.98 delinquent in plan payments, which represents multiple months of the $2,995.00 plan payment. Another plan payment will be due the day of the August 25, 2020 hearing. According to Trustee, the Plan calls for payments to be received by Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

The proposed July 2020 payment of $6,000.00 depended on the court granting Debtor's Motion to Refinance. The court granted Debtor's Motion on August 11, 2020. Dckt. 59.

At the hearing, **xxxxxx**

The Modified Plan does not complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is not confirmed. [FN. 1]

FN. 1. The Court notes that Debtor's counsel is recycling docket control number SG-2 and using for every motion filed in this case. Each motion, application, and objection is assigned by the filer a unique docket control number, unless ordered by the court. L.B.R. 9014-1(c).

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Candace Jean Ward-Porter ("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.

38. **16-25411-E-13 DPC-1** **CANDACE WARD-PORTER** **Shareen Golbahar** **CONTINUED MOTION TO DISMISS CASE**
6-3-20 [24]

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on June 3, 2020. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion to Dismiss is xxxxx.

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Candace Jean Ward-Porter ("Debtor"), is $5,585.22 delinquent with a plan payment of $2,730.18.

DEBTOR'S RESPONSE

Debtor filed a Response on June 17, 2020, arguing Debtor was unknowingly underpaying because of a mortgage payment increase. Debtor also explains a motion to refinance Debtor's property will be filed to help Debtor become current.

DISCUSSION

This is a case where the Debtor was very diligent in confirming a plan and making payments. Debtor explained the delinquency arose when she did not increase the payment after a mortgage payment increase.

July 1, 2020 Hearing

The court shall continue the hearing to August 25, 2020 at 2:00pm. to allow Debtor to file a motion to incur debt and file a modified plan if necessary.

Motion to Refinance

Debtor filed a Motion to Refinance which was granted on August 11, 2020. Dckt. 59.

Motion to Confirm Modified Plan

Debtor filed a Motion to Confirm Plan and a Modified Plan on July 17, 2020. Dckt. 47, 49. The confirmation was set for hearing the same day as the continued hearing of the instant Motion to Dismiss.

The Motion to Confirm was ~~granted/denied, and the Plan is confirmed / not confirmed~~.

August 25, 2020 Hearing

At the hearing, **xxxxxxx**

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Dismiss is xxxxx.

39. **18-25114-E-13** **DAVID HOWERTON** **MOTION TO WAIVE SECTION 1328 CERTIFICATE REQUIREMENT, CONTINUE CASE ADMINISTRATION, SUBSTITUTE PARTY, AS TO DEBTOR**
PGM-2 **Peter Macaluso**
39 thru 40
7-20-20 [52]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on July 20, 2020. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

The Motion to Substitute is xxxxxxxxxx.

Successor in Interest, Shaun Howerton, ("Movant") seeks an order approving the motion to substitute Successor in Interest for the deceased Debtor, David De Vaughn Howerton. This motion is being filed pursuant to Federal Rule of Bankruptcy Procedure 7025 and Local Bankruptcy Rule 1016.

Debtor filed for relief under Chapter 13 on August 15, 2018. On November 14, 2018, Debtor's Chapter 13 Plan was confirmed. Dckt. 21. On May 4, 2020, Debtor David De Vaughn Howerton passed away. Successor in Interest asserts that he is the lawful successor and representative of Debtor.

Pursuant to Federal Rule of Bankruptcy Procedure 7025, Successor in Interest requests authorization to be substituted in for the deceased debtor and to perform the obligations and duties of the deceased party. A Notice of Death was filed on July 20, 2020. Dckt. 52. Successor in Interest is the son of the deceased party and is the successor's heir and lawful representative. Successor in Interest states that he will continue to prosecute this case in a timely and reasonable manner.

DISCUSSION

Federal Rule of Bankruptcy Procedure 1016 provides that, in the event a debtor passes away in a case "pending under chapter 11, chapter 12, or chapter 13, the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred." Consideration of dismissal and its alternatives requires notice and opportunity for a hearing. *Hawkins v. Eads (In re Eads)*, 135 B.R. 380, 383 (Bankr. E.D. Cal. 1991). As a result, a party must take action when a debtor in Chapter 13 dies. *Id*.

Federal Rule of Bankruptcy Procedure 7025 incorporates Federal Rule of Civil Procedure 25, which provides that "[i]f a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed." *Hawkins v. Eads*, 135 B.R. at 384.

The application of Rule 25 and Rule 7025 is discussed in COLLIER ON BANKRUPTCY, 16th Edition, § 7025.02, which states:

> Subdivision (a) of Rule 25 of the Federal Rules of Civil Procedure deals with the situation of death of one of the parties. If a party dies and the claim is not extinguished, then the court may order substitution. **A motion for substitution may be made by a party to the action or by the successors or representatives of the deceased party.** There is no time limitation for making the motion for substitution originally. Such time limitation is keyed into the period following the time when the fact of death is suggested on the record. In other words, procedurally, **a statement of the fact of death is to be served on the parties in accordance with Bankruptcy Rule 7004 and upon nonparties as provided in Bankruptcy Rule 7005** and suggested on the record. The suggestion of death may be filed only by a party or the representative of such a party. The suggestion of death should substantially conform to Form 30, contained in the Appendix of Forms to the Federal Rules of Civil Procedure.
>
> The motion for substitution must be made not later than 90 days following the service of the suggestion of death. Until the suggestion is served and filed, the 90 day period does not begin to run. In the absence of making the motion for substitution within that 90 day period, paragraph (1) of subdivision (a) requires the action to be dismissed as to the deceased party. However, the 90 day period is subject to enlargement by the court pursuant to the provisions of Bankruptcy Rule 9006(b). Bankruptcy Rule 9006(b) does not incorporate by reference Civil Rule 6(b) but rather speaks in terms of the bankruptcy rules and the bankruptcy case context. Since Rule 7025 is not one of the rules which is excepted from the provisions of Rule 9006(b), the court has discretion to enlarge the time which is set forth in Rule 25(a)(1) and which is incorporated in adversary proceedings by Bankruptcy Rule 7025. Under the terms of Rule 9006(b), a motion made after the 90 day period must be denied unless the movant can show that the failure to move within that time was the result of excusable neglect. The suggestion of the fact of death, while it begins the 90 day period running, is not a prerequisite to the filing

> of a motion for substitution. The motion for substitution can be made by a party or by a successor at any time before the statement of fact of death is suggested on the record. **However, the court may not act upon the motion until a suggestion of death is actually served and filed.**
>
> The **motion for substitution together with notice of the hearing is to be served on the parties in accordance with Bankruptcy Rule 7005 and upon persons not parties in accordance with Bankruptcy Rule 7004 . . . .**

(emphasis added); *see also Hawkins v. Eads*, *supra*. While the death of a debtor in a Chapter 13 case does not automatically abate due to the death of a debtor, the court must make a determination of whether "[f]urther administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred." FED. R. BANKR. P. 1016. The court cannot make this adjudication until it has a substituted real party in interest for the deceased debtor.

Local Bankruptcy Rule 5009-1(b) requires the filing with the court of Form EDC3-190 Debtor's 11 U.S.C. § 1328 Certificate. LOCAL BANKR. R. 1016-1 permits a movant, in a single motion, to request for the substitution for a representative, the authority to continue the administration of a case, and waiver of post-petition education requirement for entry of discharge.

Trustee filed a Response on August 7, 2020. Dckt. 61. Trustee notes that seven persons, most of them unknown to Trustee, are listed in amended Schedule I but he expects them to be Debtor's relatives. *Id*. Moreover, Trustee does not know if movant is the proper party under FRBP 7025. *Id*.

Successor in Interest filed a Reply requesting additional time to meet with counsel so as to prepare a declaration to address Trustee's concerns. Dckt. 68. Successor in Interest filed such a declaration on August 20, 2020 explaining that he should be named the successor as Debtor had discussed this situation with their attorney at the start of the case, and adding that Successor's siblings have no interested in contributing to the house or the plan and they both live out of state. Dckt. 70. Successor also explains that the additional persons contributing to the plan are all his children and their spouses. *Id*. at 2.

Here, Shaun Howerton has provided sufficient evidence to show that administration of the Chapter 13 case is possible and in the best interest of creditors after the passing of the debtor. The Motion was filed within the ninety-day period specified in Federal Rule of Bankruptcy Procedure 1016, following the filing of the Notice of Death. Dckt. 52. Based on the evidence provided, the court determines that further administration of this Chapter 13 case is in the best interests of all parties, and that Successor in Interest, Shaun Howerton, as the son of the deceased party and as the successor's heir and lawful representative, may continue to administer the case on behalf of the deceased debtor, David De Vaughn Howerton.

Requested Waiver of 11 U.S.C. § 1328 Requirements

In the Motion, Movant makes the assertion that

> 6. The clerk of the Court will be unable to enter discharge for Debtor, David E. Howerton, without the required form or an order waiving the

11 U.S.C. §1328 requirement.

Motion, p. 2:16-19; Dckt. 52. No statement with particularity of what these requirements are or why they should be waived is provided. It appears that all of the "requirements," whatever that term means, of 11 U.S.C. § 1328 are to be waived.

Congress provides in 11 U.S.C. § 1328 the requirements for entry of a discharge. For the way the Motion is drafted, Movant could appear to be requesting that the court waive:

A. That plan payments be completed. 11 U.S.C. § 1328(a).

B. That all domestic support obligations have been paid. *Id.*

C. That not all plan payments need to be made under specified circumstances. *Id.*, ¶ (b).

D. Exceptions to discharge of specified debts. *Id.*, ¶ (c), (d).

E. Prohibition on entry of discharge under specified circumstances. *Id.*, ¶ (f).

F. That the debtor complete a post-petition financial management course. *Id.*, ¶ (g) [This is the provision that a proposed successor representative requests to be waived when seeking such relief.]

G. Vacating a dismissal based on 11 U.S.C. § 522(q). *Id.*, ¶ (h).

Movant may assert that in the "rush" to get this relief, Movant's counsel neglected to clearly state the relief that can be requested in good faith.

However, as the court reviewed the additional documents filed in support of the present Motion and the Motion to Confirm a Chapter 13 Plan, it appears that Movant does not have the requisite to serve as a representative of the deceased Debtor. In reading Movant's Declaration in support of the Motion to Confirm, his testimony under penalty of perjury includes the following:

> 9. I believe that the plan complies with the applicable provisions of the bankruptcy code in that it provides for submission of a payment necessary for execution of the plan, provides for payment in full of all priority claims, and requires that each claim within a particular class is to receive the same treatment. Given my financial circumstances, I believe I am doing the very best I can in my Chapter 13 plan. I have filed my plan in good faith, and without any other intention or any deceit.

Declaration, ¶ 9; Dckt. 49. In reading this, the court first notes that Movant appears to be providing the court with his legal opinion on the Bankruptcy Code and how it is properly applied in this case. Nothing in his testimony provides the court to believe that he has such a legal education and the experience in practicing under the Bankruptcy Code. [FN. 1]

FN. 1. A review of the California State Bar website using the attorney search function discloses that no attorney with the name Shaun Howerton is listed as a member (active, retired, suspended, disbarred) is an attorney in California.

Movant provides the analysis of treatment of claim within each class. Rather than providing the court with factual testimony that his attorney can argue demonstrates good faith, Movant then provides the court with his legal conclusion that he has filed his plan in good faith.

Movant then continues to testify under penalty of perjury in seeking to have this court confirm a modified plan that:

> 11. I have listed **all of my personal property on Schedule B** and **all real property on Schedule A.** Although I am not an attorney and lack legal competence to determine how the assets of my bankruptcy estate Ire [sic] properly claimed as exempt, I have relied upon my attorney to prudently make such claims of exemptions in my case, in my best interests.

Declaration ¶ 11, *Id.*

Movant, who seeks to be the personal representative for the deceased Debtor is stating under penalty of perjury that he personally has listed all of his real and personal property on the deceased Debtor's schedules. Now, one might argue that Movant's counsel used his standard declaration form for when he has the debtor, and not a successor, as a client and just missed correcting the pronoun. However, that doesn't explain how a competent personal representative carefully reading the documents put in front of him wouldn't jump up and say, "Hey, none of my assets are in this bankruptcy case!"

Rather, the above demonstrates a person without the ability to review pleadings and fulfill the obligations of a representative, or one who finds it not worth his time to do so and just "let's the attorney do whatever."

Additionally, with respect to 11 U.S.C. § 1328, it is represented that the Movant cannot provide the certifications required for the entry of a discharge, and that for Movant to be the representative the court must waive all "requirements" of 11 U.S.C. § 1328.

~~The court not being presented with a proposed representative with the ability to fulfill such obligations and fiduciary duties, the court denies the Motion.~~

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Substitute After Death filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is ~~denied, and Shaun Howerton is substituted as the successor-in-interest to David De Vaughn Howerton and is not allowed to continue the administration of this Chapter 13 case pursuant to Federal Rule of Bankruptcy Procedure 1016.~~

~~**IT IS FURTHER ORDERED** that the requested waiver of 11 U.S.C. § 1328 Certification provided for the deceased Debtor David De Vaughn Howerton is denied.~~

40. 18-25114-E-13 PGM-1 — DAVID HOWERTON — Peter Macaluso — MOTION TO MODIFY PLAN — 7-20-20 [47]

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 July 20, 2020. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is xxxxxxxxxx.

The debtor, David De Vaughn Howerton ("Debtor"), through his successor in Interest, Shaun Howerton, seeks confirmation of the Modified Plan to begin remitting payments after the death of Debtor, his father, so that Successor in Interest may keep the family home. Declaration, Dckt. 49. The Modified Plan provides for monthly plan payments of $1,955.00 commencing August 25, 2020 for 61 months, and a 0 (zero) percent dividend to unsecured claims totaling 14,332.83. Modified Plan, Dckt. 58. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on August 7, 2020. Dckt. 63. Trustee opposes confirmation of the Plan on the basis that:

A. Trustee is unable to fully comply with §3.07(b) of the plan.

B. Trustee may not disburse pursuant to § 3.06 as parties are still bound to the terms of the currently confirmed plan.

C. Confirmation of the Plan is contingent on court granting the omnibus motion requesting substitution of party.

D. Trustee is uncertain of the ability to pay.

DISCUSSION

Post-Petition Arrearage

Trustee asserts that due to Debtor's failure to make plan payments, Trustee has been unable to make class 1 creditor Freedom Mortgage Corporation installment payments for months May, June, and July 2020. Trustee's accounting shows that the correct amount due for the unpaid installments is $4,070.78, as opposed to the amount scheduled by debtor of $3,933.30. Thus, Trustee is unable to fully comply with Section 3.07 of the Plan.

However, Trustee notes he would not oppose correcting the amount and months in default in the order confirming the plan.

Proposed Successor in Interest filed a Reply on August 18, 2020 requesting the following language be added to the order confirming the plan:

> "The total amount of post-petition arrearage owed to Freedom Mortgage is $4,070.78 for months May, June and July 2020 and shall be paid at an arrearage dividend of $65.00."

Dckt. 66, at 2.

Non-Standard Provisions

The proposed plan's Non-Standard Provisions provide in part:

> Balance on hand as of July 15, 2020 = $270.00
> Trustee is to disburse funds on hand as follows:
> To administrative pursuant section 3.06

Plan, Dckt. 58, at 7.

Trustee opposes the instruction to disburse balance on hand to administrative expenses

pursuant to § 3.06 as the parties are still bound by the terms from the current confirmed plan.

Substitution of Party

Proposed Successor in Interest's Omnibus motion was ~~not granted~~ and thus the proposed Successor in Interest has ~~not~~ been properly substituted in and is the proper party to request modification of the Plan.

Failure to Afford Plan Payment

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Trustee notes that the amended Schedule I lists the income of seven individuals. Declaration filed in support does not explain who each individual is and the information related to their contributions.

On August 20, 2020, Proposed Successor in Interest filed a Supplemental Declaration providing the breakdown of the relationship and amount of contribution for each of the seven individuals listed on the amended Schedule I. Dckt. 72. Proposed Successor in Interest explains that with his income and the help of his family they are working towards retaining the family home and continue his father's Chapter 13. Moreover, Proposed Successor in Interest attached copies of declarations from each of the family members contributing towards the plan. Exhibits A - F, Dckt. 73.

Unfortunately, the court denied the Motion to appoint the proposed Successor in Interest as the representative of the deceased Debtor, and there is not a real party in interest who may prosecute the present Motion.

~~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 he debtor, David De Vaughn Howerton ("Debtor"), through his successor in Interest, Shaun Howerton 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 July 21, 2020, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"),for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

41. **18-27437-E-13** **JOHN/STACY HUNT** **MOTION TO MODIFY PLAN**
LBG-1 **Lucas Garcia** **6-29-20 [38]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 29, 2020. By the court's calculation, 57 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is denied.

The debtors, John Louis Hunt and Stacy Lee Hunt ("Debtor") seek confirmation of the Modified Plan to account for unforeseen financial events including their son willing to gift them the money to pay off their bankruptcy early. Declaration, Dckt. 40. The Modified Plan provides:

1. payments of $350.00 for 18 months,

2. followed by payments of $475.00 for 3 months,

3. A lump sum payment of $22,500.00 by September 25, 2020 after confirmation of modified plan, and

4. a 1 (one) percent dividend to unsecured claims totaling $111,520.00.

Modified Plan, Dckt. 44. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on August 6, 2020. Dckt. 47. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor proposes a 22 month plan while not paying in full the allowed unsecured claims.

B. Debtor is delinquent in Plan payments.

DISCUSSION

Delinquency

The Chapter 13 Trustee asserts that Debtor is $105.00 delinquent in plan payments, which represents a portion of the $475.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Plan is Fewer Than Sixty Months Without Paying All Unsecured Claims

The Plan violates 11 U.S.C. § 1325(b)(4)(B) because the Plan will complete in less than the permitted sixty months without providing full payment of all allowed unsecured claims. Debtor has proposed a plan term of 22 months, but Debtor has proposed to pay less than the full amount of allowed unsecured claims.

According to Debtor, the plan will complete in 22 months with a lump sum payment of $22,500 to pay off the remaining payments and distribute an additional 10% to the creditors which they contend is more than they would receive if they simply followed through with the plan as it stands. Declaration, ¶ 8. The lump sum is a gift from Debtor's son. *Id.* ¶ 4. The Declaration of Alexander J. Hunt, Debtors' son, was filed in support of the Motion, where the son states that he has the means to assist his parents in completing the plan and will do so with the $22,500.00 gift. Declaration, ¶ 3, Dckt. 41.

The proposed Modified Plan deceptively states the term of the Plan. In Paragraph 2.03 Debtor and Counsel state that the terms of the Plan is 60 months. Dckt. 44. But then in the plan funding in the Additionally provisions, Debtor states that he will pay only $350.00 a month for 18 months, then $475 per month for 3 months, and a payment of $22,500.00 by September 25, 2020. *Id.* at 7. But Debtor does not state what he will pay for the remaining months of the sixty (60) month term of the Plan.

No provision is made in the Plan for how the Debtor is to have a $22,500.00 payment in one month.

The Motion states that Debtor's son will make a "gift" of sufficient funds to accelerate the total amount to be paid through the plan, plus an additional 10%, in a lump sum so that parties in interest do not have to wait 60 months to complete the Plan. Dckt. 38.

Debtor's son has provided his Declaration (Dckt. 41), testifying that he is able to provide the funds to accelerate the Plan payments.

The Chapter 13 Trustee stridently opposes the Plan, demanding that the payments be spread out over 60 months and that creditors suffer a 10% reduction in the total monies distributed, in addition to having them spread over five years.

The Chapter 13 Trustee states that Debtor has not shown that it is good faith for Debtor arrange to have their son accelerate the plan payments by gifting Debtor the money to complete the payments today, rather than dragging them over an additional thirty-eights (38) months - which would be an otherwise unnecessary additional (approximate) one thousand one hundred and fifty-two (1,152) days to be paid.

In support of delaying payment to creditors, the Trustee first cites to *Danielson v. Flores (In re Flores)*, 735 F.3d 855 (9th Cir. 2013), and quotes § 2.03 of the Plan that states, " 'The monthly plan payments will continue for **60** months unless all allowed unsecured claims are paid in full within a shorter period of time.' " Opposition, p. 1:26.5, 2:.5-2; Dckt. 47.

The *Flores* decision addressed the application of the applicable commitment period when confirming a plan as provided in 11 U.S.C. § 1325 - the first confirmation of a plan in a case, and not the modification of an existing confirmed plan.

Here, the Debtor is seeking confirmation of a Modified Plan pursuant to 11 U.S.C. § 1329, not § 1325. The provisions of 11 U.S.C. § 1329(a) addressing the scope of modifications is as follows (emphasis added):

> 1329. Modification of plan after confirmation
>
> (a) At any time after confirmation of the plan but before the completion of payments under such plan, the **plan may be modified**, upon request of the debtor, the trustee, or the holder of an allowed unsecured claim, **to**—
>
> (1) increase or reduce the amount of payments on claims of a particular class provided for by the plan;
>
> (2) **extend or reduce the time for such payments**;
>
> (3) alter the amount of the distribution to a creditor whose claim is provided for by the plan to the extent necessary to take account of any payment of such claim other than under the plan; or
>
> (4) reduce amounts to be paid under the plan by the actual amount expended by the debtor to purchase health insurance for the debtor . . .

When considering the modification of a confirmed Chapter 13 plan as permitted in 11 U.S.C. § 1329, Congress provides in 11 U.S.C. § 1329(b) [emphasis added] the following requirements:

> (b)
>
> > (1) Sections **1322(a), 1322(b), and 1323(c**) of this title and the requirements of section **1325(a)** of this title apply to any modification under subsection (a) of this section.

(2) The plan as modified becomes the plan unless, after notice and a hearing, such modification is disapproved.

(c) A plan modified under this section **may not provide for payments over a period that expires after the applicable commitment period under section 1325(b)(1)(B)** after the time that the first payment under the original confirmed plan was due, unless the court, for cause, approves a longer period, but the court may not approve a period that expires after five years after such time. . . .

Congress does not expressly make the provisions of 11 U.S.C. § 1325(b), applicable commitment period, a requirement for confirmation of a modified plan. The provisions of 11 U.S.C. § 1325(a), which are expressly made applicable by Congress states (emphasis added):

(a) **Except as provided in subsection (b)**, the **court shall confirm a plan if**—

(1) the plan complies with the provisions of this chapter and with the other applicable provisions of this title;

(2) any fee, charge, or amount required under chapter 123 of title 28, or by the plan, to be paid before confirmation, has been paid;

(3) the plan has been proposed in good faith and not by any means forbidden by law;

(4) the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of this title on such date;

(5) with respect to each allowed secured claim provided for by the plan—

(A) the holder of such claim has accepted the plan;

(B)

(i) the plan provides that—

(I) the holder of such claim retain the lien securing such claim until the earlier of—

(aa) the payment of the underlying debt determined under nonbankruptcy law; or
(bb) discharge under section 1328; and

(II) if the case under this chapter is dismissed or converted without completion of the plan, such lien shall also be retained by such holder to the extent recognized by applicable nonbankruptcy law;

(ii) the value, as of the effective date of the plan, of property to be distributed under the plan on account of such claim is not less than the allowed amount of such claim; and

(iii) if—

(I) property to be distributed pursuant to this subsection is in the form of periodic payments, such payments shall be in equal monthly amounts; and

(II) the holder of the claim is secured by personal property, the amount of such payments shall not be less than an amount sufficient to provide to the holder of such claim adequate protection during the period of the plan; or

(C) the debtor surrenders the property securing such claim to such holder;

(6) the debtor will be able to make all payments under the plan and to comply with the plan;

(7) the action of the debtor in filing the petition was in good faith;

(8) the debtor has paid all amounts that are required to be paid under a domestic support obligation and that first become payable after the date of the filing of the petition if the debtor is required by a judicial or administrative order, or by statute, to pay such domestic support obligation; and

(9) the debtor has filed all applicable Federal, State, and local tax returns as required by section 1308.

For purposes of paragraph (5), section 506 shall not apply to a claim described in that paragraph if the creditor has a purchase money security interest securing the debt that is the subject of the claim, the debt was incurred within the 910-day period preceding the date of the filing of the petition, and the collateral for that debt consists of a motor vehicle (as defined in section 30102 of title 49) acquired for the personal use of the debtor, or if collateral for that debt consists of any other thing of value, if the debt was incurred during the 1-year period preceding that filing.

As one can see, the 11 U.S.C. § 1325(a) requirements have an "Except as provided in subsection (b)" caveat. Some have argued that this brings in the minimum term provisions of 11 U.S.C. § 1325(b) into 11 U.S.C. § 1329, while others have argued it does not. The Trustee does not provide the court with any analysis of this point of law.

A recent case the court stumbled across in which the Ninth Circuit Court of Appeals

discussed the shortening of the time period for the payments required in the original confirmed plan is *In re Sisk*, 962 F.3d 1133, 1147 (9th Cir. 2020), in which the Circuit Court of Appeals states (emphasis added):

> Section **1329 permits a debtor**, trustee, or unsecured creditor **to modify a bankruptcy plan** "[a]t any time" before "the completion of payments under such plan." 11 U.S.C. § 1329(a). The provision allows them to request changes to various aspects of the plan, **including the** amount, **timing, and distribution of payments** by the debtor. 11 U.S.C. § 1329(a). Specifically, **§ 1329 permits** a request to "extend or **reduce the time for [plan] payments**." 11 U.S.C. § 1329(a)(2).
>
> The BAP concluded that it would not make sense to allow a debtor to have unfettered discretion to complete payments "early" and shorten the time for payments without complying with § 1329's requirements for plan modification. *Escarcega*, 573 B.R. at 237-38. Allowing a debtor to do this, the court reasoned, would render a trustee's or creditor's § 1329 modification rights a "nullity." Id. at 238-239.
>
> We disagree. First, **§ 1329 governs modifications of an existing, confirmed plan**. 11 U.S.C. § 1329(a). While it **permits changes to a plan's "time" for payments**, it **says nothing about requiring fixed durations *ab initio***. A post-confirmation **ability to modify** a plan's duration **does not logically command a set plan length pre-confirmation**. We see nothing wrong with a plan starting with an expected length at confirmation and then being converted to a fixed length as the plan unfolds.
> . . .
> In fact, § 1329 shows that Congress knew precisely how to enact temporal requirements. Like § 1322(d) and § 1325(b)(1)(B), § 1329 uses clear temporal language: "[a] plan modified under this section may not provide for payments over a period that expires after the applicable commitment period[.]" 11 U.S.C. § 1329(c) (emphasis added). **It also allows for the modification of the "time" for plan payments. 11 U.S.C. § 1329(a)(2).** Congress's unmistakable use of temporal language highlights its absence elsewhere.

Thus, contrary to what the Trustee implies, the Ninth Circuit Court of Appeals states that the Debtor may seek to modify a plan that changes the timing for the payments. It may be that change is made in good faith, or it may not be made in good faith. An example of bad faith could include where a debtor currently has a low projected disposable income, say the debtor is completing his or her final year of law school and has little income, but will likely be "making the big bucks" beginning in the second year of the plan. While such "big bucks" would not be a basis for a change in the applicable commitment period from the "poor law student" three years, it may well change the projected disposable income for the final two of the three applicable commitment period years.

Here, the Trustee asserts that "The Trustee opposes the reduction as the Debtor is above the relevant median income and has not provided an adequate explanation of the proposed decrease in the commitment period." Opposition, p. 2:3-4; Dckt. 47. The Trustee does not indicate why the explanation that the son is making a loan to allow for creditors to get their money, plus a 10% increase, immediately

rather than wait sixty months is not adequate. The Trustee instead cites Bankruptcy Appellate Panel authority that factors for considering whether a proposed modification of a plan is in good faith requires an assessment of the Debtor's financial condition, which includes considering:

> [t]he debtor's current disposable income, the likelihood that the debtor's disposable income will significantly increase due to [greater] income or decreased expenses over the remaining term of the original plan, the proximity of time between confirmation of the original plan and the filing of the modification motion, and the risk of default over the remaining term of the plan versus the certainty of immediate payment to creditors. Id., at 370,371 (quoting *Sunahara v. Burchard (In re Sunahara)*, 326 B.R. 768, 781-82 (B.A.P. 9th Cir. 2005)) (alteration in original).

Opposition, p. 2:8-15; *Id.* Though having conducted a First Meeting of Creditors and sufficiently investigated this case to conclude that making the disbursements over sixty months was in good faith, the Trustee offers nothing with respect to why having the son immediately fund the distribution does not continue to be in good faith as the Trustee previously determined. The Trustee states that there is no showing of decreases in income or increases in expenses to warrant an amendment to accelerate the payments from an additional one thousand one hundred and fifty-two (1,152) days to be paid to just one month.

Looking at Amended Schedule I, Debtor is one income, self-employed household with $4,946 in gross monthly income from Debtor's business. Dckt. 20. On Schedule J, Debtor lists monthly expenses of ($4,580) a month. Dckt. 1 at 37-38. It may be that the Trustee believes that there may be a likelihood that the business income may increase over the additional plan months and that the current projected disposable income is not an accurate figure of what is realistic. But the Trustee has not articulated such opposition. The Trustee merely argues that sixty months is sixty months, and since the original plan had to be sixty months, then the creditors must wait sixty months to get them monies rather than the remainder of the sixty months being shortened to one month.

To be fair, Debtor offers no analysis of why the current projected disposable income will not increase over the remaining term of the Plan.

The Trustee also Objects that the Debtor is $105.00 in default under the proposed plan. Likely, this one "C-Note" default would be cured.

However, the court sustains the Trustee's opposition and the court denies confirmation of the Modified Plan that would accelerate payments to Creditor and provide a 10% enhancement. Neither the Debtor nor Trustee provide the court with evidence of the likelihood of Debtor's projected disposable income continuing as is, increasing, or decreasing. For Debtor, as movant, Debtor has the burden of presenting evidence that the plan is presented in good faith and that it complies with the Bankruptcy Code requirements. Not having provided evidence concerning projected disposable income and whether a lump sum cash out is proper under the circumstances, Debtor has failed to carry Debtor's initial burden of proof and persuasion.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, John Louis Hunt and Stacy Lee Hunt ("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 as sought by the Chapter 13 Trustee, the monthly plan payments shall continue to be paid monthly for another thirty-two months and not made in a lump sum by September 25, 2020.

42. **11-44540-E-13 PLC-7** **42 thru 43**

MERCEDES PEREZ
Peter Cianchetta

MOTION TO VALUE COLLATERAL OF WILLIAM H. CAMP TRUST
7-24-20 [257]

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 Creditor, and Office of the United States Trustee on July 24, 2020. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

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

The present Motion seeks to value the secured claim of a person know as the "William H. Camp Trust." As discussed below, there is no showing that the trustee of the William H. Camp Trust has been served with these pleadings.

The Motion to Value Collateral and Secured Claim of William H. Camp Trust ("Creditor") is xxxxxxxxxx.

The Motion to Value filed by Mercedes M. Perez ("Debtor") to value the secured claim of William H. Camp Trust ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 260. Debtor is the owner of the subject real property commonly known as 6 Fourth Avenue, Isleton, California ("Property"). Debtor seeks to value the Property at a fair market value of $150,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

This is the second time Debtor has filed a motion to value this secured claim. *See* Dckt. 59. The previous motion was granted on April 10, 1012. Dckt. 128. However after diligent search, Debtor discovered that William Camp passed away in 2010 and therefore service made upon him was not effective. The Declaration of Peter Cianchetta, Debtor's Counsel, is filed in support of the motion. Dckt. 267. Debtor's Counsel testifies under penalty of perjury that with the help of an investigator he located Debra Camp, niece of William Camp, who seems to be the only surviving heir to Creditor. Service was

provided to Debra Camp. *See* Proof of Service, Dckt. 261.

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

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

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

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

DISCUSSION

The Motion clearly seeks relief against the "William H. Camp Trust." If a trust is the "creditor," then the relief is sought against the trustee of the trust. A trust is not a separate legal entity to be sued as would be a corporation, partnership, or limited liability company. *Portico Management Group, LLC v. Harrison*, 202 Cal. App. 4th 464 (2011).

Here, a person named Debra Camp has been served, with the Certificate of Service stating the service as being completed on:

> By certified mail:
>
> William H. Camp Trust
> Successor in interest
> Debra Camp
> 38691 Willowood Lane
> Squaw Valley, CA 93675

Dckt. 261. This does not purport to serve the pleadings on the successor trustee of the William H. Camp Trust. If the Trust has been dissolved and the assets, including the claim at issue, have been distributed to Debra Camp, then the Debtor would be prosecuting this Motion against Debra Camp, not the William Camp Trust.

The first deed of trust secures a claim with a balance of approximately $161,000.00. Amended Schedule D, Dckt. 111. Creditor's second deed of trust secures a claim with a balance of approximately $110,000.00. *Id*. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, the value of the collateral, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion to Value Collateral and Secured Claim filed by Mercedes M Perez ("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 William H. Camp Trust ("Creditor") secured by a first in priority deed of trust recorded against the real property commonly known as 6 Fourth Avenue, Isleton, California, is determined to be a secured claim in the amount of $0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $150,000.00 and is encumbered by a senior lien securing a claim in the amount of $161,000.00, which exceeds the value of the Property that is subject to Creditor's lien.

43. **11-44540-E-13 PLC-8** **MERCEDES PEREZ** **Peter Cianchetta** **MOTION TO VALUE COLLATERAL OF WILLIAM CAMP** **7-24-20 [262]**

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 Creditor and Office of the United States Trustee on July 24, 2020. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

The present Motion seeks to value the secured claim of a person know as the "William Camp." As discussed below, Debtor advises the court that William Camp is deceased and is not longer a living person against whom relief may be requested.

The Motion to Value Collateral and Secured Claim of William H. Camp ("Creditor") is xxxxxxxxxx.

The Motion to Value filed by Mercedes M Perez ("Debtor") to value the secured claim of William H. Camp ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 260. Debtor is the owner of the subject real property commonly known as 6 Fourth Avenue, Isleton, California ("Property"). Debtor seeks to value the Property at a fair market value of $150,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

This is the second time Debtor has filed a motion to value this secured claim. *See* Dckt. 63. The previous motion was granted on April 10, 2012. Dckt. 130. However after diligent search, Debtor discovered that William Camp passed away in 2010 and therefore service made upon him was not effective. The Declaration of Peter Cianchetta, Debtor's Counsel, is filed in support of the motion. Dckt. 268. Debtor's Counsel testifies under penalty of perjury that with the help of an investigator he located Debra Camp, niece of William Camp, who seems to be the only surviving heir to Creditor. Service was provided to Debra Camp. *See* Proof of Service, Dckt. 266.

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

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

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

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

DISCUSSION

Movant states in the Motion that William Camp is deceased, but the relief is still sought against William Camp. In the Certificate of Service, the deceased William Camp is not served with the pleadings, but only a Debra Camp, with the service states as follows:

> By certified mail:
>
> Debra Camp
> Successor in interest to
> William Camp
> 38691 Willowood Lane
> Squaw Valley, CA 93675

Nothing is provided to demonstrate that an order can be entered against the deceased William Camp changed the decedent's rights and interests, by serving someone identified as a "successor," but against whom no relief is sought.

Federal Rule of Civil Procedure 17, which is incorporated into Federal Rule of Bankruptcy Procedure 7017, 9014, states that the capacity to sue or be sued (including a motion filed against someone) is determined by the law of the individual's domicile. Fed. R. Civ. P. 17(b)(1).

California Code of Civil Procedure § 377.40 provides that when relief against someone who has died is sought:

> § 377.40. Persons against whom cause of action may be asserted
>
> Subject to Part 4 (commencing with Section 9000) of Division 7 of the Probate Code governing creditor claims, a cause of action against a decedent that survives may be asserted against the decedent's personal representative or, to the extent provided by statute, against the decedent's successor in interest.

The relief must be sought against the decedent's personal representative or, if provided by statute, against the decedent's successor in interest. As discussed by the California District Court of Appeal,

> The 'Estate' of a decedent is not an entity known to the law. (*Tanner v. Best*, 40 Cal.App.2d 442, 104 P.2d 1084.) In *Estate of Bright v. Western Air Lines*, 104 Cal.App.2d 827, 828–829, 232 P.2d 523, 524, it was said: 'An 'estate' is not a legal entity and is neither a natural nor artificial person. It is merely a name to indicate the sum total of the assets and liabilities of a decedent, or of an incompetent, or of a bankrupt. [Citations.] An 'estate' can neither sue nor be sued.'

Lazar v. Lazar's Estate, 207 Cal.App.2d 554, 557 (2nd DCA 1962).

Here, there is only the non-legally recognizable decedent against whom relief is sought - no representative or no successor.

~~The first deed of trust secures a claim with a balance of approximately $161,000.00. Amended Schedule D, Dckt. 111. Creditor's second deed of trust secures a claim with a balance of approximately $110,000.00. *Id*. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, the value of the collateral, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.~~

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

> ~~Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.~~
>
> ~~The Motion to Value Collateral and Secured Claim filed by Mercedes M Perez ("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 William H. Camp ("Creditor") secured by a first in priority deed of trust recorded against the real property commonly known as 6 Fourth Avenue, Isleton, California, is determined to be a secured claim in the~~

~~amount of $0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $150,000.00 and is encumbered by a senior lien securing a claim in the amount of $161,000.00, which exceeds the value of the Property that is subject to Creditor's lien.~~

44. **19-26846-E-13 ADR-3** **LEANNE BOGER** **Justin Kuney** **MOTION TO MODIFY PLAN** **6-30-20 [46]**

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 30, 2020. By the court's calculation, 58 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is denied.

The debtor, Leanne Lynn Boger ("Debtor") seeks confirmation of the Modified Plan to address actual claims filed and to cure default caused by a reduction in income and underestimated expenses. Declaration, Dckt. 48. The Modified Plan provides for monthly plan payments of $670.00 for months 9 through 60, and a 0 (zero) percent dividend to unsecured claims totaling 38,952.60. Modified Plan, Dckt. 50. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on August 7, 2020. Dckt. 58. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor is delinquent in plan payments.

B. The Plan is not feasible.

C. Debtor failed to explain two large payments made to Trustee in July.

DISCUSSION

Delinquency

The Chapter 13 Trustee asserts that Debtor is $3,169.30 delinquent in plan payments, where the plan as proposed calls for $17,670.00 to have been paid but Debtor has paid a total of $14,500.70 to date. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). The plan may not be feasible. According to the Trustee's calculation the plan will take 72 months to complete. The Trustee shows approximately $41,943.08 remains to be paid through the plan. Thus 63 months remain ($41,943.08 / $670.00 = 63).

Moreover, §7.02 of the proposed plan states the Trustee is to pay the Post-Petition Monthly Payment through month 8 (June 2020) of the plan. The debtor will pay the payment directly beginning August 1, 2020. Thus, it appears that no payment will have been made for the month of July, which is contrary to the mortgage agreement which states that Debtor was to begin modification payments beginning April 1, 2020. *See* Dckt. 36, at 16.

At the hearing, **xxxxxxxx**

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

Larger Payments

Debtor paid Trustee received two payments of $1,566.90 each in the month of July. Trustee is uncertain how Debtor was able to afford such payments when Debtor's supplemental Schedules J filed on June 30, 2020 as Exhibit A, indicates Debtor has a monthly net income of $670.00. *See* Dckt. 49, at 5. Debtor fails to explain the source of the funds whether these savings, actual income, or Debtor liquidated an asset.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Leanne Lynn Boger ("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.

45.	**20-22954-E-13** **DPC-2** **45 thru 47**	**NORMAN CIVELLO** **Randall Ensminger**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **7-29-20 [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.

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)©.

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 29, 2020. 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.

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

A. Debtor is delinquent in plan payments.

B. Plan exceeds 60 months.

C. Debtor failed to file tax returns.

D. "No look" attorney fees are unclear.

E. The Plan might not be feasible.

DISCUSSION

Trustee's objections are well-taken.

Delinquency

Debtor is $4,455.00 delinquent in plan payments, which represents one month of the $4,455.00 plan payment. Before the hearing, another plan payment will be due. According to Trustee, the Plan in § 2.01 calls for payments to be received by Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Plan Exceeds 60 Months

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to Trustee, the Plan will complete in 153 months due to the Internal Revenue Service, which is estimated in the plan as $3,200.00, filing a claim for $59,499.98. Proof of Claim, 3-1. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

Failure to File Tax Returns

According to Proof of Claim 3 filed by Internal Revenue Service, Debtor has failed to file federal income tax returns for the 2016 or 2019 tax years. Filing of the return is required. 11 U.S.C. §§ 1308, 1325(a)(9). Failure to file a tax return is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

"No Look" Fee

Under Local Bankruptcy Rule 2016(a), compensation paid to attorneys for the representation of chapter 13 debtors is determined according to 2016-1(c), which provides for fixed fees approved in connection with plan confirmation. However, if a party in interest objects, such as the trustee, compensation is determined in accordance with 11 U.S.C. §§ 329 and 330.

Trustee objects to a "no look" fee in this case. Debtor's plan claims the "no look" attorney fees. Dckt. 20, at 2, §3.05. The plan states that the attorney was paid $2,000.00 prior to the filing of the Voluntary Petition and $2,000.00 is to be paid through the plan. The Statement of Financial Affairs lists that the attorney was paid $4,000.00 paid prior to filing of the Voluntary Petition. It is unclear how much the attorney was paid prior to filing of the Voluntary Petition.

Thus, counsel's fees will be reviewed under the standard loadstar analysis.

Failure to Afford Plan Payment

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Trustee argues the Plan might not be feasible where plan proposes what might be adequate protection payments but notes the claim filed by creditor Homestreet Bank, Proof of Claim 2-1, shows no payments have been made since January 2018 to present. Without an accurate picture of Debtor's

financial reality, the court cannot determine whether the Plan is confirmable.

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

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

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

46. **20-22954-E-13 EMM-1** **NORMAN CIVELLO**
Randall Ensminger

OBJECTION TO CONFIRMATION OF PLAN BY HOMESTREET BANK
7-17-20 [30]

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

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

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 17, 2020. By the court's calculation, 39 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. The Plan is not be feasible.

DISCUSSION

Creditor's objections are well-taken.

Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). According to Creditor, Plan is not feasible on the basis that the Plan relied on a loan modification that was recently denied by Creditor. Creditor asserts that Debtor did not qualify for a loan modification because Debtor had defaulted on the mortgage within 24 months of the prior modification

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

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by HomeStreet Bank ("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.

47. **20-22954-E-13 DPC-1** | **NORMAN CIVELLO** **Randall Ensminger** | **MOTION FOR DENIAL OF DISCHARGE OF DEBTOR UNDER 11 U.S.C. SECTION 727(A)** **7-27-20 [35]**

Final Ruling: No appearance at the August 25, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney, on July 27, 2020. By the court's calculation, 31 days' notice was provided. 28 days' notice is required.

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

The Objection to Discharge is sustained.

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

Debtor filed a Chapter 7 bankruptcy case on October 1, 2019. Case No. 19-26176. Debtor received a discharge on January 13, 2020. Case No. 19-26176, Dckt. 22.

The instant case was filed under Chapter 13 on June 9, 2020.

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 January 13, 2020, which is less than eight years preceding the date of the filing of the instant case. Case No. 19-26176, Dckt. 22. 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. 20-22954), 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 P. Cusick, the Chapter 13 Trustee, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to Discharge is sustained, and upon successful completion of the instant case, Case No. 20-22954, the case shall be closed without the entry of a discharge.

48. **19-25563-E-13 ADR-1** **48 thru 49**

MARK KELLEY
Justin Kuney

MOTION TO MODIFY PLAN
6-29-20 [43]

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 29, 2020. By the court's calculation, 57 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is denied.

The debtor, Mark Alan Kelley ("Debtor") seeks confirmation of the Modified Plan to cure default in plan payments caused by fluctuations in his income due to COVID-19 and address actual claims filed. Declaration, Dckt. 45. The Modified Plan provides for monthly plan payments of $7,600.00 for 75 months, and a 100 percent dividend to unsecured claims totaling $11,220.09. Modified Plan, Dckt. 47. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on August 6, 2020. Dckt. 51. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor is delinquent in plan payments.

B. The plan is not feasible.

C. Trustee is unable to fully comply with Section 3.07(b) of the plan.

D. Debtor fails to explains delinquency prior to the COVID-19 pandemic.

E. Schedules I and J were filed as exhibits only.

DISCUSSION

Delinquency

The Chapter 13 Trustee asserts that Debtor is $2,800.00 delinquent in plan payments, which represents a fraction of the $7,170.00 proposed plan payment.

Moreover, the Chapter 13 Trustee asserts that Debtor is $62,539.40 delinquent in plan payments to date. Debtor seeks to extend the plan term due to COVID-19 related financial hardship; however, Trustee notes that Debtor fails to explain their delinquency prior to the COVID-19 pandemic. Trustee's records show that Debtor made no plan payments in October through December 2019 and January through July 2020.

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

Failure to Complete Plan Within Allotted Time

The Plan will complete in more than the proposed 84 months. According to the Chapter 13 Trustee, the Plan will complete in 88 months due to Debtor's proposed payments will total $562,400.00, where $522,511.30 is required to pay creditors and Trustee fees are approximately $56,240.00. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

Post-Petition Arrearage

Trustee asserts that due to Debtor's failure to make plan payments, Trustee has been unable to make class 1 creditor PHH Mortgage Services installment payments for months October and December 2019, and January through July 2020. Trustee's accounting shows that the amount due for the unpaid installments is $19,548.27 for the property located on Zermatt Dr. And $19,735.47 for the North Lakeshore Blvd. property. Thus, Trustee is unable to fully comply with Section 3.07 of the Plan.

Schedules I and J

Debtor filed supplemental Schedules I and J as exhibits in support of the motion. Trustee argues that as they were not filed in the court's docket as amended or supplemental, this will make it difficult for parties to find Debtor's most recent budget on file.

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

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Mark Alan Kelley ("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.

49. **19-25563-E-13 DPC-1** **MARK KELLEY** **Justin Kuney** **CONTINUED MOTION TO DISMISS CASE 6-3-20 [35]**

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on June 3, 2020. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion to Dismiss is xxxxx.

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Mark Alan Kelley ("Debtor"), is $48,597.52 delinquent with a monthly plan payment of $6,970.94.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on June 17, 2020. Dckt. 41. Debtor states a modified plan will be filed prior to the hearing date.

DISCUSSION

Debtor is delinquent in plan payments. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee agreed to continue the hearing on this Motion to the date and time scheduled for the hearing on the Debtor's motion to confirm a modified plan.

MOTION TO CONFIRM PLAN

The Motion to Confirm was denied as Debtor is delinquent, and thus, the Plan was not confirmed.

AUGUST 25, 2020 HEARING

At the hearing, **xxxxxx**

50. **18-24658-E-13 CRG-3** | **WILLIAM FREEMAN/CARLA TAVORMINA FREEMAN** **Carl Gustafson** | **MOTION TO MODIFY PLAN 7-7-20 [65]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 7, 2020. By the court's calculation, 51 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is denied.

The debtors, William Matthew Freeman and Carla Elise Tavormina Freeman ("Debtor") seek confirmation of the Modified Plan to cure default in plan payments after substantial increase in expenses and incurred tax debt . Declaration, Dckt. 67. The Modified Plan provides monthly payments of $1,595 per month commencing on July 2020 until the completion of the plan, and a 10 (ten) percent dividend to unsecured claims totaling $265,000.00. Modified Plan, Exhibit A, Dckt. 65. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on August 7, 2020. Dckt. 77. Trustee opposes confirmation of the Plan on the basis that:

A. The proposed Modified Plan was not filed separately.

B. Debtor should file supplemental Schedules I and J.

C. Debtor's Counsel must file a motion for attorney's fees.

DISCUSSION

Plan Not Filed Separately

Local Bankruptcy Rule 9004-2(c)(1) provides:

> *Filing of Separate Documents*. Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents.

L.B.R. 9004-2(c)(1).

Debtor's Plan was filed as Exhibit A of the Motion to Confirm Plan. Debtor did not file the Plan separately. Trustee argues any party of interest may be unable to find the Plan without searching for it.

Filing of the Plan as an Exhibit to the Motion to Confirm is not the practice in this bankruptcy court. Counsel is reminded of the court's expectation that documents filed with this court comply as required by Local Bankruptcy Rule 9004-1(a). Failure to comply is cause to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

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

Attorney's Fees

The Motion states Debtor's Attorney will file a motion for additional fees of approximately $8,000.00, but no such motion has been filed to date. Debtor's Attorney has been previously allowed fees in the amount of $6,942.50 under the confirmed plan. Trustee asserts that this objection has been raised out of abundance of caution so as to clarify that if the modification is approved, the additional attorney fees are not yet approved and still require a separate motion.

As the proposed Plan indicates that Debtor's attorney will seek court approval of fees under 11 U.S.C. §§ 329 and 330, Debtor's attorney is advised that a Motion for Attorney's Fees is required for compensation.

Feasibility

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor's Declaration indicates they recently had twins and the pregnancy and childbirth increased their expenses substantially, plus they no longer have a tenant. Moreover, Debtor also state

they have incurred signification tax debt. Trustee notes that the last schedules I and J were filed July 2018.

In order for the court to determine whether the Plan is confirmable, the court must have an accurate picture of Debtor's financial reality. By filing Supplemental Schedules I and J, Debtor would provide such clarity.

At the hearing, **xxxxx**

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, William Matthew Freeman and Carla Elise Tavormina Freeman ("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.

51. **20-20820-E-13 LBG-2** **BRENT BRANDOLINO** **Lucas Garcia** **OBJECTION TO CLAIM OF PATRICK GARCIA, CLAIM NUMBER 8-1** **7-6-20 [45]**

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

Local Rule 3007-1 Objection to Claim—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on July 6, 2020. By the court's calculation, 50 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

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

The Objection to Proof of Claim Number 8-1 of Patrick Garcia is dismissed without prejudice.

Brent Alan Brandolino, Chapter 13 Debtor, ("Objector") requests that the court disallow the claim of Patrick Garcia ("Creditor"), Proof of Claim No. 8-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $911,000.00.

Objector asserts that the classification of this claim should be unsecured and that the claim should be allowed in the amount of $0.00 as a disputed and unliquidated claim. No legal authority is presented either in the Objection or in a separate points and authorities for the proposition that because a debt is merely "disputed" that it be disallowed. Additionally, that it is "unliquidated" is a basis to just disallow it in its entirety rather than liquidate the amount.

Objector then states that if the court does not go along with the disputed/unliquidated basis for disallowing the claim in its entirety, then the court should allow it in the reduced amount of $181,477.00, which is an amount stated in the Creditor's amended trial brief filed in state court.

Objector offers no explanation of what the claim is and what objection there is to the claim, other then to further say that whatever documents are attached to the proof of claim (which is prima facie

evidence of the claim) are alleged to generically be insufficient. From reading the Objection the court has no idea of what the claim as stated in the Proof of Claim is and what objections Objector has to the claim.

Objector has provided his "Declaration" in support of the Objection. Dckt. 47. The Declaration is nothing more than a cut and paste of the Objection, with no personal knowledge testimony. Objector then, under penalty of perjury provides his legal conclusion that the Proof of Claim does not comply with Federal Rule of Bankruptcy Procedure 3001(c). Seeing this Declaration puts in question Objector's good faith, and it appears that his idea of testifying under penalty of perjury is to merely sign whatever his attorney puts in front of him. [FN. 1]

FN. 1. Using the attorney search function on the California State Bar website, no attorney (whether active, inactive, suspended, or disbarred) with the name Brent Brandolino is stated to be an attorney in California.

http://members.calbar.ca.gov/fal/LicenseeSearch/QuickSearch?ResultType=0&SearchType=0&FreeText=brent%20brandolino&SoundsLike=False

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Review of Proof of Claim 8-1

Objector has provided the court with a copy of Proof of Claim 8-1 in support of the Objection. Exhibit 1, Dckt. 48. A summary of the information in Proof of Claim No. 8-1 includes the following:

A. Creditor.....W. Patrick Garcia. POC 8-1, Part 1, § 3.

B. Proof of Claim 8-1 is signed by Robert Sinclair, Esq., as the attorney for Creditor. *Id.*, Part 3.

C. The amount of the claim is stated to be $911,000.00, and is stated to be a general unsecured claim. *Id.*, Part 2, § 7.

D. The basis of the claim is stated to be:

> Breach of contract and property damages ($161,000); and personal injuries and loss of income ($750,000).

Id., Part 2, § 8.

Objector also provided a copy of Creditor's Second Amended Trial Brief in the Superior Court Action in support of the Objection. Exhibit 2, *Id*. A summary of the information therein includes the following allegations:

1. "Plaintiff engaged several contractors to fix and finish Brandolino and Riley's work . Including all extras that arose during the process, plaintiff incurred $78,797.00 to complete this work."

2. "As shown on Exhibit 1, the total cost of the work attributable to repairs caused by water infiltration [due to Debtor's improper construction work] was $48,400.00.

3. "Plaintiff's loss of use damage claim equals $33,750.00, calculated as 90% of $2,500.00 per month reasonable rental value multiplied by 15 months."

4. Prejudgment interest estimated to be $20,500.00.

5. Total damages for the work done on Debtor's home and the damages to the property and use of the property total $181,447.00.

6. No amounts in excess (other than the actual pre-judgment interest, fees, costs, and expenses) are requested.

OPPOSITION FILED BY CREDITOR

Creditor responded, jumping in with both feet. The basis for opposing the Objection that are stated in the Opposition (Dckt. 56) include:

A. Creditor first asserts that his claim consists of two parts:

1. The damages from the defective construction work on Creditor's residence; and

2. Personal injuries and economic losses as the result of an accident that took place on October 4, 2018.

B. The damages from the defective construction work is stated to be $161,000.00

C. For the personal injury and economic loss claim, the court summarizes what is stated as follows:

1. Objector partially did work to construct a skylight in Creditor's residence.

2. The skylight was framed, but not completed, and when Creditor was walking on the roof he fell through the opening, which is alleged to have been concealed by Objector.

3. The medical bills from Kaiser total $141,327.09.

4. Six months of rehabilitation treatment was required.

5. Due to the injuries Creditor's commercial pilot's license was suspended and he was unable to work in his business, having to hire replacement pilots, with that causing $120,000.00 in damages.

6. Creditor filed a separate lawsuit in Placer County Superior Court seeking damages of $141,327 in medical costs, $120,000 of lost income, and $488,672 for pain and suffering.

Creditor asserts that to the extent that Objector did not understand the claims, additional documentation has been provided as to damages.

DISCUSSION

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

Creditor provides six pages worth of background regarding the claim starting at the time Creditor hired Debtor for construction work to the point where he suffered serious injuries that he alleges were caused by Debtor's breach of contract and negligence. *Id.* at 2-7.

Creditor asserts that the original claim was amended to provide evidence to support the claim and additional information regarding the circumstances which led to the claim. *Id*. at 8, 5-9. Moreover, Creditor argues that Debtor in contrast provides no evidence to disprove the claim, relies on Debtor's unsupported conclusion that he bears no liability. *Id.*, 9-11. Creditor admits that at this point the claim is unliquidated as there has not been final adjudication but that adequate evidence is provided to support the factual bases underlying liability and the amounts claimed. *Id.*, 11-14.

Lastly, Creditor argues that Debtor's Plan is unfeasible as it accounts for Creditor's claim in the amount of $150,000 where Creditor filed a timely proof of claim in the amount of $911,000.

No Reply Filed by Objector

The Objector has not filed a reply to the Opposition pleadings.

Proof of Claim

The deadline to file a proof of claim was April 23, 2020. Dckt. 17. Creditor filed a Proof of Claim on April 9, 2020. The claim was stated at $911,000, divided as $161,000 for breach of contract and property damages and $750,000 in personal injuries and loss of income. No attachments were included in this original proof of claim.

On August 7, 2020, Creditor filed amended Proof of Claim 8-2. Attached to the amended proof of claim: a Complaint for Breach of Contract, Negligence, and Claim Against Sureties filed with

the Superior Court of California County of Placer on August 31, 2018 and a form complaint for Personal Injury, Property Damage, Wrongful Death filed with the Superior Court of California on July 15, 2019.

Claims Presented to the Court

Congress provides in 11 U.S.C. § 109(e) monetary claims limits for an individual to be eligible to be a Chapter 13 debtor.

> 11 U.S.C. § 109
>
> (e) Only an individual with regular income that owes, on the date of the filing of the petition, **noncontingent, liquidated, unsecured debts of less than $419,275** and noncontingent, liquidated, secured debts of less than $1,257,850 or an individual with regular income and such individual's spouse, except a stockbroker or a commodity broker, that owe, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts that aggregate less than $419,275 and noncontingent, liquidated, secured debts of less than $1,257,850 may be a debtor under chapter 13 of this title.

11 U.S.C. § 109(e) [emphasis added].

For unsecured debts, there must be less than $419,275 in noncontingent, liquidated unsecured debts. Merely because a debtor disputes the liability, that does not move the debt outside of the 11 U.S.C. § 109(e) eligibility limits.

The Ninth Circuit has held that a debt is liquidated for the purposes of calculating eligibility for relief under § 109(e) if the amount of the debt is readily determinable. *Slack v. Wilshire Ins. Co. (In re Slack)*, 187 F.3d 1070, 1073 (9th Cir. 1999). In *In re Fostvedt*, the Ninth Circuit Court of Appeals stated that the question of whether a debt is liquidated "turns on whether it is subject to 'ready determination and precision in computation of the amount due." 823 F.2d 305 (9th Cir. 1987) (quoting *Sylvester v. Dow Jones and Co., Inc. (In re Sylvester)*, 19 B.R. 671, 673 (B.A.P. 9th Cir. 1982)). Further, the Ninth Circuit Court of Appeals in *In re Wenberg* affirmed the reasoning in the Bankruptcy Appellate Panel opinion: "The definition of 'ready determination' turns on the distinction between a simple hearing to determine the amount of a certain debt, and an extensive and contested evidentiary hearing in which substantial evidence may be necessary to establish amounts or liability." *In re Wenberg*, 94 B.R. 631 (B.A.P. 9th Cir. 1988).

As discussed in Collier on Bankruptcy, noncontingent debt does not mean an obligation that has been reduced to a judgment, but merely that there are no pending events upon the debtor being liable must occur:

> [b] Only Noncontingent Debts Counted Toward Chapter 13 Limitations
>
> In deciding whether a claim is noncontingent, and therefore counted toward the debt limits, courts have generally ruled that **if a debt does not come into existence until the occurrence of a future event, the debt is contingent. A claim is contingent as to liability if the debtor's legal duty to pay does not come into existence until triggered by the occurrence of a future event**. Thus,

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

Here, the liquidated debts (those for which there are documented, though possibly disputed, amounts are asserted) are:

1. Damages for having to hire other contractors to fix and finish the work on the residence.....$ 78,797.00.

2. Damages to the residence caused by water infiltration.....$ 48,400.00

3. Damages for loss of use.....$ 33,750.00

4. Prejudgment interest.....$ 20,500.00

5. Damages for Medical Costs.....$141,327.00

6. Damages for loss of income.....$120,000.00.

These damages are not contingent on the happening of any future events, but all the events have occurred with it only for a court to resolve any disputes.

The court has not included the pain and suffering damages as they are not readily computable, documented damages.

Just for Creditor, there are $442,774.00 noncontingent, liquidated unsecured claims. This Creditor's claims alone exceed the $419,275 eligibility limit imposed by Congress under 11 U.S.C. § 109(e).

Looking at Schedule E, though being a defendant in two separate lawsuits in which the damages as reviewed above were sought, Objector did not list Creditor on his Schedules, but only Sinclair Wilson, apparently stating under penalty of perjury that Creditor's lawyers are owed a debt by Debtor. Schedule D/E, Dckt. 14 at 18. Objector then states under penalty of perjury that the claim being asserted against him was only $150,000.00, a clearly inaccurate number.

On Schedule E/F Debtor lists an additional $64,715.18 in unsecured claims, which when added to the noncontingent, liquidated claims asserted by Creditor, Debtor's total noncontingent,

liquidated unsecured claims total $507,489.18 - well in excess of the $419,275 eligibility limit mandated by Congress.

The court dismisses the Objection to Claim without prejudice, concluding that due to Objector's ineligibility to be a Chapter 13 debtor, it would be improper to exercise federal court jurisdiction to adjudicate a claim objection for a bankruptcy case that could never be prosecuted.

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 Claim of Patrick Garcia ("Creditor"), filed in this case by Brent Alan Brandolino, Chapter 13 Debtor, ("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 the Objection to Proof of Claim Number 8-1 of Creditor is dismissed without prejudice.

52. **10-26931-E-13 TJW-3** **LYDIA ANICIETE** **Timothy Walsh** **MOTION TO AVOID LIEN OF WASHINGTON MUTUAL BANK FA, CHASE BANK**
7-14-20 [47]

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

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

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

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

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

The Motion to Avoid Judicial Lien is dismissed without prejudice.

This Motion requests an order avoiding the lien of Washington Mutual Bank FA, Chase Bank ("Creditor") against property of the debtor, Lydia Aniciete ("Debtor") commonly known as 121 Sorrell Court, Vallejo, California ("Property").

The basis of this motion is that the lien created by the filing of a Deed of Trust is unsecured, pursuant to Order of this Court entered on May 3, 2010, where the court granted Debtor's Motion to Value Collateral of Creditor, and Creditor's claim was valued at $0.00 and was treated as an unsecured creditor in this chapter 13 case. *See* Dckts. 24, 25.

Clarification of Relief Requested

Debtor requests that the court issue an "order" to "void" the lien that was created by filing a deed of trust. It is alleged that creditor Chase Bank was found to be "unsecured" and treated as an "unsecured creditor" in this case.

Debtor further explains that a Motion to Value was filed and the court's order was docketed in which the claim of Washington Mutual Chase Bank secured by a second deed of trust on the Property was determined to be a secured claim with a value of $0.00 and the entire claim was an unsecured claim under the confirmed Chapter 13 plan.

Debtor states that Debtor's personal liability on the debt secured by the second deed of trust was discharged in a prior Chapter 7 case in 2009.

Debtor offers no federal or California law to support the assertion that the court should "void" the deed of trust.

No copy of the deed of trust to be "voided" is provided as an exhibit.

In substance, the court understands Debtor to be intending to request is a judgment determining that the lien of Washington Mutual Bank FA, Chase Bank is void because there is no obligation secured by it. The secured claim was determined to be of $0.00 and that determination became final upon the Debtor completing the Chapter 13 Plan in this case. It is well established under California law that a lien is void when there is no obligation it secures. Additionally, 11 U.S.C. § 506(d) provides that a lien for which there is not an allowed secured is "void," not avoidable by the court.

This court has addressed the quiet title proceedings after the completion of a Chapter 13 plan in several cases, including *Martin v. CitiFinancial Services, Inc. (In re Martin)*, 491 B.R. 122 (Bankr. E.D. CA 2013), and *In re Frazier*, 448 B.R. 803 (Bankr. ED Cal. 2011), *affd.*, 469 B.R. 803 (ED Cal. 2012) (discussion of "lien striping" in Chapter 13 case). These include the prevailing debtor seeking statutory and contractual attorney's fees.

So, the court interprets the requested relief to be that of quieting title by determining the extent, validity, and priority of the lien pursuant to the deed of trust.

Need for An Adversary Proceeding

The Supreme Court provides in Federal Rule of Bankruptcy Procedure 7001(2) that an adversary proceeding is required for "(2) a proceeding to determine the validity, priority, or extent of a lien or other interest in property, but not a proceeding under Rule 3012 or Rule 4003(d);. . . ." The "Rule 3012" proceeding reference is one to determine the amount of a secured claim pursuant to 11 U.S.C. § 506(a), which would be a motion to value the secured claim. (Rule 4003(d) relates to avoidance of transfers in exempt property as provided in 11 U.S.C. § 522(f), which is not applicable to the present motion.)

Debtor has shown how relief by motion is proper.

While commending an adversary proceeding is a more expensive proposition, the holders of deeds of trust that have been rendered void by the completion of Chapter 13 plans generally are financial institutions. As discussed by this court in *Martin*, *supra*, the court is not a for free reconveyance company for such creditors and the high level of sophistication for consumer attorneys who deal with these complex federal and state laws have hourly rates commensurate with such sophisticated issues. The court cannot recall the last time it had to issue a judgment determining the lien void, with the creditor quickly reconveying the deed of trust when contacted by counsel and reminded of their liability

for contractual and statutory attorney's fees.

Real Party in Interest

The Motion requests relief against a person named "Washington Mutual Bank, FA, Chase Bank." Dckt. 47. That name is not familiar to the court. The FDIC website does not list such a person as being FDIC insured.

For Washington Mutual Bank, FA, the FDIC reports that it is no longer doing business, and was acquired with governmental assistance by JPMorgan Chase Bank, N.A. [FN. 1]

FN. 1.
https://research2.fdic.gov/bankfind/detail.html?bank=32633&name=Washington%20Mutual%20Bank%2C%20FA&searchName=washington%20mutual%20bank%2C%20fa&searchFdic=&city=&state=&zip=&address=&searchWithin=&activeFlag=&searchByTradename=false&tabId=2

The FDIC lists a number of banks with names starting with Chase Bank, but thye all appear to have been closed.

On the Certificate of Service, it states that the agent for JP Morgan Chase Bank (which is not a person named in this Contested Matter) was served. Dckt. 51. Also a Chase Home Finance, LLC was served as a "servicing agent, for Chase Bank." *Id.* There is nothing showing that Chase Home Finance, LLC is the agent for a "Chase Bank," to the extent that such "Chase Bank" should exist.

It does not appear that there is any person against whom relief is requested for which the court may grant relief.

If the court were to just blindly sign an order, the unfortunate circumstance would be that such an order would be void, the deed of trust would continue in full force and effect, and someday counsel's phone would ring and his client, a purchaser from his client, a title company, or other person whose title is impaired make demand on counsel to make good on the void order.

The court dismisses the Motion without prejudice.

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Lydia Aniciete ("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 dismissed without prejudice.

53. 18-27963-E-13 PGM-4 — EUFEMIO/LIZA SEGUBAN — Peter Macaluso — MOTION TO MODIFY PLAN — 7-14-20 [86]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 15, 2020. By the court's calculation, 43 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 xxxxx.

The debtor, Eufemio Ordonia Seguban and Liza Frani Seguban ("Debtor") seek confirmation of the Modified Plan to begin remitting payments after defaulting in payments due to financial hardship related to COVID-19, an increase in rent, and emergency dental procedures. Declaration, Dckt. 90. The Modified Plan provides for monthly plan payments of $865.00 commencing on August 25, 2020 for 65 months, and a 0 (zero) percent dividend to unsecured claims totaling $17,842.58. Modified Plan, Dckt. 89. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on August 6, 2020. Dckt. 96. Trustee opposes confirmation of the Plan on the basis that:

A. Supplemental Schedules I and J reflect unsupported monthly contributions and unexplained expenses.

B. Debtor was delinquent in plan payments prior to COVID-19.

DISCUSSION

Unexplained Reduction in Expenses

Debtor's Amended Schedule I reflects an increase in average monthly income of $500.00, from monthly contributions from their two adult children. Trustee notes that no declarations from the children have been filed to provide more information about these contributions such ability to make the contribution and for how long.

The Amended Schedule J reflects unreasonable decreases and increases in expenses, such as: a decrease from $865.00 to $300.00 for food; an increase from $189.00 to $302.99 for telephone, cell, internet, cable; a decrease from $110.00 to $25.00 for clothes; a decrease from $125.00 to $25.00 for personal care; a decrease from $40.00 to $0.00 for charitable contributions; an increase of $0.00 to $100.21 for life insurance; and an increase from $0.00 to $282.00 for vehicle insurance. Absent explanation from Debtor as to how the proposed increase in income and drastic decrease in expenses will be achieved, the court does not believe that Debtor's projection is in good faith. That is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(3).

Delinquency

The Chapter 13 Trustee asserts that Debtor is $5,915.00 delinquent in plan payments to date. Debtor seeks to extend the plan term due to COVID-19 related hardship and other events; however, Trustee notes that Debtor fails to explain their delinquency prior to the COVID-19 pandemic. Trustee's records show that Debtor made no plan payments in November 2019 and February 2020, prior to the stay at home orders.

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

Debtor filed a Reply requesting a continuance of the hearing in order to meet with counsel and provide Trustee a supplemental declaration addressing Trustee's concerns regarding delinquency, changes to expenses, and Debtor's children contribution to Debtor's Plan. Dckt. 100.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by the debtors, Eufemio Ordonia Seguban and Liza Frani Seguban ("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
> **xxxxxxx**

FINAL RULINGS

54. **19-25708-E-13** **SUZANNE HOGUE** **MOTION TO MODIFY PLAN**
DCN-1 **Bruce Dwiggins** **7-17-20 [20]**

Final Ruling: No appearance at the August 25, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 17, 2020. By the court's calculation, 39 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Suzanne Pearl Hogue ("Debtor"), has filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response indicating non-opposition on July 17, 2020. Dckt. 22. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

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

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

55. **19-26112-E-13** **MARCO PEDRAZA** **MOTION TO MODIFY PLAN**
PGM-1 **Peter Macaluso** **7-23-20 [46]**

Final Ruling: No appearance at the August 25, 2020 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 24, 2020. By the court's calculation, 32 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 court *sua sponte* shortens the notice period to the thirty-two days provided in light of the scope of the Modifications and responses of the Trustee.

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

The Motion to Confirm the Modified Plan is granted.

The debtor, Marco D. Pedraza ("Debtor") seeks confirmation of the Modified Plan to begin remitting plan payments after losing employment due to COVID-19. Declaration, Dckt. 48. The Modified Plan provides monthly plan payments of $1,920.00 commencing September 25, 2020 for 73 months, and a 100 percent dividend to unsecured claims totaling $0.00. Modified Plan, Dckt. 49. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on August 7, 2020. Dckt. 53. Trustee opposes confirmation of the Plan on the basis that:

A. Trustee is unable to comply with Section 3.07(b) of the Plan.

DISCUSSION

Post-Petition Arrearage

Trustee asserts that due to Debtor's failure to make plan payments, Trustee has been unable to make class 1 creditor Franklin Creditor Management Corp installment payments for month June, July, and August 2020. The Plan as proposed fails to specify the months delinquent. Trustee would not oppose including the months for post-petition arrears in the order confirming and correcting the total amount.

Debtor filed a Reply on August 18, 2020 requesting the order confirming the Plan address Trustee's concerns by adding the following language:

> "The total amount of post-petition arrearage owed to Franklin Credit Management Corp. is $1,708.26 for months June, July, and August 2020 and shall be paid at an arrearage dividend of $25.00."

Dckt. 56, at 2.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Marco D. Pedraza ("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 July 23, 2020, as amended:
>
> > "The total amount of post-petition arrearage owed to Franklin Credit Management Corp. is $1,708.26 for months June, July, and August 2020 and shall be paid at an arrearage dividend of $25.00."
>
> is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

56. **20-22272-E-13** **MARK RAMOS** **MOTION TO CONFIRM PLAN**
SLH-1 **Seth Hanson** **7-13-20 [19]**

Final Ruling: No appearance at the August 25, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 13, 2020. By the court's calculation, 43 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Mark Antonio Ramos ("Debtor") has provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on August 5, 2020. Dckt. 27. 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 the debtor, Mark Antonio Ramos ("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 July 13, 2020, is confirmed. Debtor's Counsel shall

prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"),for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

57. 20-22842-E-13 DPC-1 — NUR BANO — Gary Fraley — MOTION FOR DENIAL OF DISCHARGE OF DEBTOR UNDER 11 U.S.C. SECTION 727(A) — 7-22-20 [34]

Final Ruling: No appearance at the August 25, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney, on July 22, 2020. By the court's calculation, 36 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 P. Cusick, the Chapter 13 Trustee, ("Objector") objects to Nur Bano's ("Debtor") discharge in this case. Objector argues that Nur Bano ("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 September 23, 2019. Case No. 19-25936. Debtor received a discharge on January 27, 2020. Case No. 19-25936, Dckt. 24.

The instant case was filed under Chapter 13 on June 2, 2020.

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 January 27, 2020, which is less than four years preceding the date of the filing of the instant case. Case No. 19-25936, Dckt. 24. 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. 20-22842), 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 P. Cusick, the Chapter 13 Trustee, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to Discharge is sustained, and upon successful completion of the instant case, Case No. 20-22842, the case shall be closed without the entry of a discharge.

58. **15-23915-E-13 DPC-4** **ELIZABETH ARMAS** **Timothy Walsh** **MOTION TO AMEND** **7-22-20 [115]**

Final Ruling: No appearance at the August 25, 2020 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on July 22, 2020. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

The Motion to Amend Order Allowing Modification Pursuant to LBR 3015-1(d)(3c) 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 Amend Order Allowing Modification Pursuant to LBR 3015-1(d)(3c) is granted.

The Chapter 13 Trustee, David P. Cusick ("Trustee"), requests the court for an amended order to correct the payment to general unsecured creditors.

Debtor and Trustee entered into a stipulation to allow for a modification of Debtor's plan pursuant to LBR 3015-1(d)(3). Dckt. 103. The stipulation changed the debtor's plan to be $12,063.01 total paid in through May 5, 2017 followed by monthly payments of $675.00 effective May 25, 2017 for the remaining 37 months of the 60-month plan, resulting in payments of $37,038.01.

The order approving the stipulation included a dividend to unsecured increased to 100%. Trustee explains that neither Debtor now Debtor's counsel agreed to such a dividend. Trustee asserts that Trustee erred in this 100% dividend calculation, which should have been no less than 25%.

Trustee requests the court amend its order to reflect that the dividend to creditors with general unsecured claims is no loess than 25%.

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 Amend Order Allowing Modification Pursuant to LBR 3015-1(d)(3c) filed by the Chapter 13 Trustee, David P. Cusick ("Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and the Order Approving Stipulation Between Debtors and Trustee to Allow Modification of Debtor Plan Pursuant to LBR 3015-1(d)(3c) is amended as follows:
>
> The dividend to be paid to unsecured is no less than 25%.
>
> No other relief is granted.

59. **15-28562-E-13 PGM-11** **ELMER/ALMA CRESPIN** **Peter Macaluso** **MOTION FOR COMPENSATION FOR PETER G. MACALUSO, DEBTORS ATTORNEY(S)** **7-27-20 [314]**

Final Ruling: No appearance at the August 25, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 27, 2020. By the court's calculation, 31 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The court sua sponte shortens the notice period to the 31 days provided given the facts and circumstances of the Motion and the modest amount of fees at issue.

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

The Motion for Allowance of Professional Fees is granted.

Peter G. Macaluso, the Attorney ("Applicant") for Elmer Noe Crespin and Alma Yared Crespin, the Chapter 13 Debtor ("Client"), makes a Request for the Additional Allowance of Fees and Expenses in this case.

Fees are requested for the period June 6, 2017, through July 16, 2020. Applicant requests fees in the amount of $2,000.00.

The Chapter 13 Trustee does not oppose Applicant's request for additional unanticipated fees. Dckt. 324.

APPLICABLE LAW

Statutory Basis For Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including–
>
> (A) the time spent on such services;
>
> (B) the rates charged for such services;
>
> (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
>
> (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
>
> (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
>
> (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

> (i) unnecessary duplication of services; or
> (ii) services that were not—
> (I) reasonably likely to benefit the debtor's estate;
> (II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). An attorney must "demonstrate only that the services were reasonably likely to benefit the estate at the time rendered," not that the services resulted in actual, compensable, material benefits to the estate. *Ferrette & Slatter v. United States Tr. (In re Garcia)*, 335 B.R. 717, 724 (B.A.P. 9th Cir. 2005) (citing *Roberts, Sheridan & Kotel, P.C. v. Bergen Brunswig Drug Co. (In re Mednet)*, 251 B.R. 103, 108 (B.A.P. 9th Cir. 2000)). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

Reasonable Fees

A bankruptcy court determines whether requested fees are reasonable by examining the

circumstances of the attorney's services, the manner in which services were performed, and the results of the services, by asking:

A. Were the services authorized?

B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?

C. Are the services documented adequately?

D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?

E. Did the attorney exercise reasonable billing judgment?

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

Reasonable Billing Judgment

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged for services, the attorney must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the services provided because the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign to run up a [fees and expenses] tab without considering the maximum probable recovery," as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat'l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) ("Billing judgment is mandatory."). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney is obligated to consider:

(a) Is the burden of the probable cost of legal services disproportionately large in relation to the size of the estate and maximum probable recovery?

(b) To what extent will the estate suffer if the services are not rendered?

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

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

A review of the application shows that Applicant's for the Estate include preparing and filing several motions to modify and responding to several motions to dismiss. The court finds the services were beneficial to Client and the Estate and were reasonable.

"No-Look" Fees

In this District, the Local Rules provide consumer counsel in Chapter 13 cases with an election for the allowance of fees in connection with the services required in obtaining confirmation of a plan and the services related thereto through the debtor obtaining a discharge. Local Bankruptcy Rule 2016-1 provides, in pertinent part,

> (a) Compensation. Compensation paid to attorneys for the representation of chapter 13 debtors shall be determined according to Subpart (c) of this Local Bankruptcy Rule, unless a party-in-interest objects or the attorney opts out of Subpart (c). The failure of an attorney to file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys, shall signify that the attorney has opted out of Subpart (c). When there is an objection or when an attorney opts out, compensation shall be determined in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017, and any other applicable authority."
> . . .
> (c) Fixed Fees Approved in Connection with Plan Confirmation. The Court will, as part of the chapter 13 plan confirmation process, approve fees of attorneys representing chapter 13 debtors provided they comply with the requirements to this Subpart.
>
> (1) The maximum fee that may be charged is $4,000.00 in nonbusiness cases, and $6,000.00 in business cases.
>
> (2) The attorney for the chapter 13 debtor must file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys.
>
> (3) If the fee under this Subpart is not sufficient to fully and fairly compensate counsel for the legal services rendered in the case, the attorney may apply for additional fees. The fee permitted under this Subpart, however, is not a retainer that, once exhausted, automatically justifies a motion for additional fees. Generally, this fee will fairly compensate the debtor's attorney for all preconfirmation services and most postconfirmation services, such as reviewing the notice of filed claims, objecting to untimely claims, and modifying the plan to conform it to the claims filed. Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation. Form EDC 3-095, Application and Declaration RE: Additional Fees and Expenses in Chapter 13 Cases, may be used when seeking additional fees. The necessity for a hearing on the application shall be governed by Fed. R. Bankr. P. 2002(a)(6).

The Order Confirming the Chapter 13 Plan expressly provides that Applicant is allowed $4,000.00 in attorneys' fees, the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dckt. 26. Applicant prepared the order confirming the Plan.

Lodestar Analysis

If Applicant believes that there has been substantial and unanticipated legal services that have been provided, then such additional fees may be requested as provided in Local Bankruptcy Rule 2016-1(c)(3). The attorney may file a fee application, and the court will consider the fees to be awarded pursuant to 11 U.S.C. §§ 329, 330, and 331. For bankruptcy cases in the Ninth Circuit, "the primary method" to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves "multiplying the number of hours reasonably expended by a reasonable hourly rate." *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). "This calculation provides an objective basis on which to make an initial estimate of the value of a lawyer's services." *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). A compensation award based on the lodestar is a presumptively reasonable fee. *In re Manoa Fin. Co.*, 853 F.2d 687, 691 (9th Cir. 1988).

In rare or exceptional instances, if the court determines that the lodestar figure is unreasonably low or high, it may adjust the figure upward or downward based on certain factors. *Miller v. Los Angeles Cty. Bd. of Educ.*, 827 F.2d 617, 620 n.4 (9th Cir. 1987). Therefore, the court has considerable discretion in determining the reasonableness of a professional's fees. *Gates v. Duekmejian*, 987 F.2d 1392, 1398 (9th Cir. 1992). It is appropriate for the court to have this discretion "in view of the [court's] superior understanding of the litigation and the desirability of avoiding frequent appellate review of what essentially are factual matters." *Hensley*, 461 U.S. at 437. Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate. *See In re Placide*, 459 B.R. at 73 (citing *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

Motions to Dismiss and Motions to Modify Plan: Applicant spent 31.55 hours in this category. Applicant reviewed trustee's seven motions to dismiss; prepared and filed seven responses; prepared and filed seven motions to modify the plan; reviewed trustee's opposition to Motion to Modify; and appeared at all hearings related to the motions to dismiss and motions to confirm.

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

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate

Peter G. Macaluso	31.55	$300.00	$9,127.50
Total Fees for Period of Application			$9,127.50

FEES AND COSTS & EXPENSES ALLOWED

Fees

The unique facts surrounding the case, including preparing and filing several motions to modify and responding to several motions to dismiss, raise substantial and unanticipated work for the benefit of the Estate, Debtor, and parties in interest.

Applicant seeks a reduced rate of $2,000 in fees. The court finds the fees are reasonable and that Applicant effectively used appropriate rates for the services provided. The request for additional fees in the amount of $2,000.00 is approved pursuant to 11 U.S.C. § 330 and authorized to be paid by David Cusick ("the Chapter 13 Trustee") from the available funds of the Plan in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

The court authorizes the Chapter 13 Trustee under the confirmed plan to pay the fees and costs allowed by the court through the Chapter 13 Plan.

Applicant is allowed, and the Chapter 13 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees $2,000.00

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Peter G. Macaluso ("Applicant"), Attorney having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Peter G. Macaluso is allowed the following fees and expenses as a professional of the Estate:
>
> Peter G. Macaluso, Professional Employed by Elmer Noe Crespin and Alma Yared Crespin ("Debtor")
>
> Fees in the amount of $2,000.00,
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330

as counsel for Debtor.

IT IS FURTHER ORDERED that David Cusick ("the Chapter 13 Trustee") is authorized to pay the fees allowed by this Order from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.