UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

September 1, 2020 at 2:00 p.m.

1.	**20-23200-E-13** **DPC-1**	**JOHN MONROE** **Chad Johnson**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **8-12-20 [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 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 August 12, 2020. By the court's calculation, 20 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 Debtor has improperly classified a claim under the Plan.

DISCUSSION

Trustee's objection is well-taken.

11 U.S.C. § 1325(a)(1) provides for confirmation of a plan if it complies with Chapter 13 provisions and other applicable Code provisions. Here, Debtor provides for creditor CitiFinancial as a Class 1 claim. However, according to the Trustee, Debtor testified at the Meeting of Creditors that this claim is due and owing now.

Thus, Trustee believes this claims should be listed under Class 2 of the Plan, so in the event a proof of claim is filed, the Trustee is not required to make the ongoing payment and an arrearage payment. The Plan does not comply with 11 U.S.C. § 1325(a)(1).

In reviewing the court's files, the court notes that the Debtor has had five prior Chapter 13 cases in the last decade:

11-35632 - represented by other counsel

Filed: June 24, 2011
Dismissed: May 7, 2012

Trustee's Final Report: Total paid by Debtor - $43,500

12-32357 - represented by other counsel

Filed: June 30, 2012
Dismissed: June 24, 2013

Trustee's Final Report: Total paid by Debtor - $37,650

14-30994 - represented by other counsel

Filed: November 6, 2014
Dismissed: January 12, 2016

Trustee's Final Report: Total paid by Debtor - $46,280

16-23617 - represented by other counsel

Filed: June 1, 2016
Dismissed: January 22, 2017

Trustee's Final Report: Total paid by Debtor - $18,355.96 (after $5,644.05 refunded to Debtor)

17-25736 - represented by current counsel

Filed: August 29, 2017
Dismissed: November 27, 2019

Trustee's Final Report: Total paid by Debtor - $125,899.62 (after $2,741.55 refunded to Debtor)

Though being unable to perform the plans confirmed in the prior cases, Debtor has invested substantial amounts of money in those cases.

Looking back at the plan in case 11-35632 (Dckt. 24), it appears that there were modest Class 1 mortgage amounts to cure, a Class 2 claim for a lienstrip, and some modest tax debts to pay. That plan provided for a 30% dividend to creditors.

Moving to the plan in case 12-32357 (Dckt. 10), the Class 1 mortgage arrearage has grown substantially to ($25,000) and the priority tax claims remained substantial.

In the third case, the plan in 14-30994 (Dckt. 75) seeks to cure a $73,000 arrearage on the Class 1 mortgage, address ($20,000) of priority tax claims, and provide a 0.00% dividend for unsecured claims.

For the fourth case, the plan in 16-23617 (Dckt. 7) seeks to cure a further growing Class 1 arrearage of $86,382.57, a reduced $9,027 priority tax claim, and provided a 3% dividend for unsecured claims.

Moving to the fifth and most recent prior case, the plan in 17-25736 (Dckt. 99), the cure for the Class 1 arrearage has grown to $113,008 and the priority tax claims have grown to $22,549. That plan provided for a 0.00% dividend to creditors holding general unsecured claims.

Though the Debtor has been nestled in the protections of the Bankruptcy Code, the financial situation appears to have gotten substantially worse over the past ten years.

Plan in Current Case

The Plan in the current case, Dckt. 2, lists the mortgage arrearage for the claims secured by the first deed of trust to be $103,000. This Plan no longer provides for a lien strip of the second, but includes the claim in class 1 to pay an "arrearage" of $25,200 for a debt that has no current post-petition payment. This second claim is the claim that caused the Trustee's Objection.

This plan further provides now for a 100% dividend for creditors holding $107,588 in general unsecured claims, while continually over the past ten years, except for one plan with a 30% dividend, the Debtor could afford to pay nothing or a small single digit percent dividend for general unsecured claims.

The Debtor filed a motion in this case to extend the automatic stay. Dckt. 16. Debtor's explanation for the prior dismissals was stated as:

5. During the course of my prior bankruptcy my retirement income fluctuated due

> to some issues with the system and due to that I fell behind on my plan payments at various times. Further, I had miscalculated my monthly expenses and was simply spread thin. I tried to catch up on multiple occasions but could not. These issues are now resolved. On top of that, my tax status has now changed due to the disability rating, which has given me a larger net. I am confident I will be able to maintain these plan payments.

Declaration, ¶ 5, Dckt. 16. In granting the motion to extend the say, the court did not make a "deep dive" on the above assertion that the prior cases, not appreciating a decade of continuous Chapter 13 cases which resulted in dismissals.

Though not presented in the Trustee's Objection, the court has reviewed Debtor's Schedules in light of there being a substantially feasibility question in light of the multiple failed prior cases. Beginning with Schedule I, Debtor lists $2,674 in wage income for himself [FN. 1] and $1,934 for the non-debtor spouse. Dckt. 1 at 34-35. Debtor then has an additional $7,754.05 in pension income. [FN. 2]

FN.1. If Debtor is again disabled, one would question his ability to work and generate $2,674 in wage income.

FN. 2. In looking at the prior cases, Debtor reported household income as follows:

17-25736	$7,754 gross pension income, with no provision for income taxes (Dckt. 77 at 1-2)
16-23617	$6,981 net wage/disability, after $1,500 a month for taxes (Dckt. 1 at 35-36)
14-30994	$8,032, net wages/disability, after $1,545 a month for taxes (Dckt. 57 at 4-5)
12-32357	$9,933.17 net wages, after $845 a month for taxes (Dckt. 12 at 25)
11-35632	$9,342.83 net wages, after $1,534 a month for taxes (Dckt. 1 at 32)

The court has not compared the various reasonable and necessary expenses stated under penalty of perjury on the various Schedule J's filed during the past decade.

Going to Schedule J, Debtor lists monthly expenses of only ($3,526). *Id.* at 37-38. Debtor reports a family unit of three persons - Debtor, non-debtor spouse, and 17 year old child. The expenses provide nothing for education of their child or provision for college expenses over the next five years.

For their two vehicles, Debtor lists $500 a month for registration, gas, maintenance, and repairs. One of Debtor's vehicles is a 2003 GMC Envoy with 180,000 miles on it. This almost 20 model year old vehicle is likely to have substantial maintenance and repair expenses.

In his declaration, Debtor states that his tax status has changed, which gives him a "larger net." Presumably, he means that the income taxes he is paying on his pension are lower. However, looking at Schedule J Debtor makes no provision to pay any state or federal taxes for his $92,928 in annual pension income.

Going to Schedules A/B and D, Debtor's residential property is listed as having a value of $575,000. Dckt. 1 at 11. The creditor holding the claim secured by the first deed of trust, is stated as having a claim of ($503,000). Schedule D, *Id.* at 19. This is the claim for which the arrearage has grown from ($25,000) to ($113,000) over the past decade. Proof of Claim No. 3-1 filed for this creditor lists the claim as being slightly higher, ($516,724.32), and the amount of the arrearage slightly lower, ($100,376.78).

Thus, by Debtor's calculation there would be approximately $75,000 in equity he is trying to protect through the decade of bankruptcy filings and growing arrearage.

Looking at Debtor's household gross income (after the tax withholding for the Debtor's and non-debtor spouse's wages, but without any provision for payment of taxes on $92,928 in pension income), Debtor shows having $11,822.19 in gross income monthly. Under the proposed plan, Debtor monthly payments for the claims secured by the first deed of trust and the second deed of trust (which presumably have income property taxes and insurance since they are not included on Schedule J) total $5,372. This is 45% of Debtor's gross monthly income.

If Debtor's federal and tax payments combined total 20%, then that would remove $1,548 a month from the gross income, reducing it to $10,273. That results in Debtor spending 52.3% of monthly net disposable income on just mortgage, property taxes, and insurance. Looking at various websites, such as for CNBC, Forbes, and Foxbusiness give 30% as the reasonable amount (which includes utilities and repairs).

Quite possibly the repeated failures by Debtor over the past decade have little to do with income, but more to do with non-realistic budgeting of expenses.

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.

2. **19-25501-E-13 MJH-2** | **AGUSTIN HINOJOSA** **Mark Hannon** | **MOTION TO CONFIRM PLAN** **7-28-20 [79]**

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 28, 2020. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied.

The debtor, Agustin Manriquez Hinojosa ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for monthly plan payments of $1,455 for the remainder of the plan term, and a 0 (zero) percent dividend to unsecured claims totaling $38,160. Amended Plan, Dckt. 82. 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 7, 2020. Dckt. 88. Trustee opposes confirmation of the Plan on the basis that:

A. Plan may not be best efforts based on significantly higher business income historically and Debtor's failure to provide information as to the current status of Debtor's business.

B. Debtor admitted at the meeting of creditors that various business equipment was not scheduled, such as a 32 foot cargo container, 3 compressors, and possibly other equipment. The Trustee is not certain

that the $4,000.00 value of the business is realistic based on the prior cash flow of the business.

C. The Proof of Claims filed by the FTB and IRS show Debtor did not file a Federal 2018 tax return and State 2017 and 2018 tax return.

DISCUSSION

Trustee's concerns are well-taken. 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.

Trustee argues that Debtor fails to provide actual gross income for April, May and June, information about Debtor's business, or exhibits such as bank statements to show Debtor's current income. Without an accurate picture of Debtor's financial situation, the court is unable to assess whether the proposed plan is Debtor's best effort.

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor's plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). The Chapter 13 Trustee states that Debtor has supplied insufficient information relating to business equipment to assist the Chapter 13 Trustee in determining the value of the property. Namely, Debtor failed to schedule a 32 foot cargo container, 3 compressors, and possibly other business equipment.

Moreover, the evidence shows Debtor has not filed all necessary tax returns. Filing of the return is required. 11 U.S.C. §§ 1308, 1325(a)(9). Failure to file a tax return alone is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

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

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

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

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

3.	**20-23901-E-13** **MOH-1**	**WENDY MORGAN** **Michael Hays**	**MOTION TO EXTEND AUTOMATIC STAY** **8-18-20 [15]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 18, 2020. By the court's calculation, 14 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.

Wendy Kristine Morgan ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 19-22049) was dismissed on July 1, 2020, after Debtor failed to make plan payments. *See* Order, Bankr. E.D. Cal. No. 19-22049, Dckt. 60, July 17, 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 Debtor lost a substantial amount of income due to the pandemic.

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

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

A. Why was the previous plan filed?

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

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

Debtor has sufficiently demonstrated the case was filed in good faith 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 Wendy Kristine 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 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.

4. **20-22504-E-13 MG-1** **ERIC/SHERI DICKSON** **Matthew Gilbert** **MOTION TO CONFIRM PLAN 7-17-20 [27]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 17, 2020. By the court's calculation, 46 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtors, Eric Lynn Dickson and Sheri Lynn Dickson ("Debtors") have provided evidence in support of confirmation.

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response indicating non-opposition on August 6, 2020. Dckt. 38. However, the Trustee notes that after reviewing Debtor's 2018 federal tax return which reflects a refund of $10,442, Trustee is not certain if the Debtor can pay the entire lump sum of $10,500 due in month 6.

At the hearing, **xxxxx**

~~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 debtors, Eric Lynn Dickson and Sheri Lynn Dickson ("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 granted, and Debtor's Amended 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 Chapter 13 Trustee will submit the proposed order to the court.

5. **20-23106-E-13 DPC-1** **KELVIN PICKETT** **Peter Macaluso** **OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK 8-12-20 [15]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on August 12, 2020. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. Debtor is delinquent in plan payments.

B. Debtor has assets that are not listed on Schedule B and D.

DISCUSSION

Trustee's objections are well-taken.

Delinquency

Debtor is $2,040.00 delinquent in plan payments, which represents one month of the

$2,040.00 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).

Feasibility

Debtor may not be able to comply with the Plan under 11 U.S.C. § 1325(a)(6). According to Trustee, Debtor admitted at the Meeting of Creditor that Debtor has assets that are not listed on Schedule B and D, such as a 2006 Kia Sedona. 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.

6. **17-27908-E-13** **LYNETTE EDWARDS** **MOTION FOR COMPENSATION FOR**
PGM-2 **Peter Macaluso** **PETER G. MACALUSO, DEBTORS ATTORNEY(S)**
8-12-20 [87]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on August 12, 2020. By the court's calculation, 20 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00).

The court *sua sponte* shortens the notice period to the twenty (20) days given based on the facts and circumstances of this case and Application.

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

Peter G. Macaluso, the Attorney ("Applicant") for Lynette Shena Edwards, 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 March 20, 2020, through June 10, 2020. Applicant requests fees in the amount of $1,200.00.

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 a motion to dismiss and a motion to modify the Chapter 13 Plan. 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. 15. 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.

Motion to Modify: Applicant spent 5.25 hours in this category. Applicant prepared and filed a motion to modify the Chapter 13 plan; prepared and filed amended schedules; communicated with client; reviewed the opposition to Motion to Modify; prepared and filed a response to the opposition to Motion to Modify; appeared at the hearing on the Motion to Modify; and prepared and filed the Order Confirming the Modified Plan.

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	3.8	$350.00	$1,330.00
Legal Assistant	1.45	$100.00	$145.00
Total Fees for Period of Application			$1,475.00

Costs and Expenses

Applicant is not seeking recovery of costs and expenses in this application.

FEES AND COSTS & EXPENSES ALLOWED

Fees

The unique facts surrounding the case, including the motion to dismiss and the motion to modify the Chapter 13 Plan, raise substantial and unanticipated work for the benefit of the Estate, Debtor, and parties in interest. The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. The request for additional fees at the reduced amount of $1,200.00 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.

Applicant is allowed, and the Chapter 13 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees $1,200.00

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 Lynette Shena Edwards ("Debtor")
>
> Fees in the amount of $1,200.00

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 the confirmed Plan.

7. 20-20815-E-13 DBJ-2 — KELLY MCKELLAR — Douglas Jacobs — MOTION TO CONFIRM PLAN — 7-13-20 [58]

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 13, 2020. By the court's calculation, 50 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied.

The debtor, Kelly Anne McKellar ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for monthly plan payments of $2,922 for the remaining 56 months of the plan, and a 27 percent dividend to unsecured claims totaling $48,222. Amended Plan, Dckt. 62. 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 17, 2020.

Dckt. 65. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor mis-classified a secured creditor's claim.

B. Plan may not be feasible.

C. Debtor is delinquent in plan payments.

DISCUSSION

Delinquency

The Chapter 13 Trustee asserts that Debtor is $60.00 delinquent in plan payments, which represents a fraction of the $2,922.00 plan payment. According to the Trustee, the Debtor has paid $7,550 into the Plan to date. Before the hearing, another plan payment will be due. According to the Chapter 13 Trustee, the Plan in § 2.01 calls for payments to be received by the Chapter 13 Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Mis-classification of a claim

Debtor's plan classifies the claim of Specialized Loan Servicing as a class 4 claim. Trustee argues that this claims should be listed in Class 1, as creditor's Proof of Claim reflects arrearage in the amount of $2,471.60. Class 4 claims are for claims not in default. Thus, Debtor has mis-classified creditor's claim.

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 plan depends on Debtor refinancing her home mortgage loan and paying creditor on or before 18th month of the plan. However, no details regarding this refinance or the property are provided.

Additionally, in her declaration, Debtor testifies that due to COVID-19 she was forced to close her business but that she "qualified for the forgivable PPP loan through SBA," (Dckt. 60) but again Debtor has failed to provide details regarding this loan and no motion for approval of that loan has been filed. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

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

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

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

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

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

8. **20-23217-E-13 DPC-1** | **DANIEL SANTIAGO** **Mikalah Liviakis** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 8-12-20 [14]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on August 12, 2020. By the court's calculation, 20 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 failed to list all of his expenses on his Schedule J or update his monthly net income.

B. Debtor fails the liquidation analysis due to preference payment.

DISCUSSION

Trustee'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 the Trustee, Debtor admitted at the Meeting of Creditors that he has been making monthly payments of $500 to his mother for an unsecured debt and his non-filing spouse has credit card payments totaling $500 a month. Trustee requested an Amended Schedule J, but no amendment has been filed to date. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Debtor Fails Liquidation Analysis

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor's plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). The Chapter 13 Trustee states that, as explained above, Debtor makes $500 monthly payments to his mother, which he has been paying during the last 12 months for a total of $6,000. Moreover, his non-filing spouse's plan is to continue making these $500 a month. Trustee asserts that in a chapter 7 proceeding, a trustee would be able to avoid such transfers. Thus, a trustee avoiding such a preference payment, would bring $5,850 after deducting trustee fees. In this case, creditors with unsecured claims will be paid approximately $2,378.64. Debtor fails the liquidation analysis.

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.

9. **20-23834-E-13 PGM-1** **CHRISTINE BONILLA** **Peter Macaluso** **MOTION TO EXTEND AUTOMATIC STAY** **8-17-20 [11]**

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

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 August 18, 2020. By the court's calculation, 14 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 xxxxx.

Christine Bonilla ("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. 20-21977) was dismissed on July 14, 2020, after Debtor failed to time pay installment fees. *See* Order, Bankr. E.D. Cal. No. 20-21977, Dckt. 37, July 14, 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.

Debtor's motion refers to Case No. 19-2667. However, that is Debtor's Chapter 7 case, filed November 8, 2019. Case No. 19-26997, Dckt. 1. Debtor received a discharge on April 7, 2020. Dckt. 62.

The Motion states with particularity the grounds upon which Debtor asserts that the present case has been filed in good faith as to creditor to be stated as follows:

> Good cause exists for the granting of the Motion to Extend Automatic Stay as to all creditors in this case. The extension is necessary to protect the Debtor's assets, absent the instant filing as the Debtor's current case overcomes any presumption of bad faith.
>
> Based on the aforementioned elements, the instant case was filed in order to protect Debtor's residence from foreclosure. The Debtor is an IHSS provider and earns $1,800.00 per month and drives for Door Dash and receives approximately $500.00 per month. In addition, her son receives SSI in the amount of $900.00 for a total monthly income of $3,200.00.

Motion, p. 3:15-25; Dckt. 11. The Motion does not discuss why or how the prior case failed and what has changed since that failure.

Debtor provides her testimony about a series of tragic events that appear to pre-date the filing of the prior bankruptcy case. Declaration, ¶ 1, Dckt. 13. With respect to the events that cause the failure of the prior case and what is different now, Debtor testifies:

> 3. Since my previous case was dismissed, my circumstances have changed as I received the worker's compensation, I paid on the real property taxes, while my car broke down and is not really road worthy so I purchased a reliable car for under $5,000, and took care of the monthly obligations that were falling behind. While I am not yet able to remove the non-paying tenants, as soon as the courts open I am positioned to have them evicted. My payment plan calls for a step-up payment that is based on the roommates leaving and better ones being found, and will be based on my returning to work.

Id., ¶ 3.

Debtor, represented by her current counsel (who substituted in shortly before the discharge was entered), filed a Chapter 7 case in November 2019, in which she was granted her discharge April 7, 2020. 19-26997; Discharge, Dckt. 62.

In the current case, the Debtor is to make ten monthly payments of $1,835 each and then fifty monthly payments of $4,235 a month. Additional Provisions, Dckt. 3 at 7. The increase in income is projected from taking in tenants to live in Debtor's house. Schedule I, Dckt. 1 at 26. It is not clear how Debtor provides for expenses of having boarders - such as insurance, repairs, maintenance, eviction and the like.

Looking at Schedule J, Debtor lists having monthly expenses (excluding mortgage) for her family unit of two person - Debtor and adult disabled child. Dckt. 1 at 27-28. Debtor lists food and housekeeping supplies of only $200 a month. Allowing $50 a month for housekeeping supplies, that would leave $75.00 per adult per month for food - which for a 30 day month averages $0.83 per meal for food. Debtor lists no expense for entertainment, $50 a month for clothing and laundry for two adults, and $170 for transportation (gas, maintenance, repairs).

These expenses do not appear to be realistic for proposing a feasible plan.

On Schedule A/B Debtor lists her residence as having a value of $230,000 (the Chapter 13 plan being prosecuted to save the property from foreclosure). Dckt. 1 at 11. On Schedule D, Debtor lists there being an obligation of $181,474 secured by the residence. *Id.* at 19.

TRUSTEE'S OPPOSITION

Trustee filed an Opposition on August 20, 2020 on the basis that Debtor identifies the wrong previous case; the declaration is not clear as to the sequence of events described by Debtor; and fails to adequately explain the worker's compensation she received and how the funds were spent. Dckt. 16. Moreover, Trustee asserts that Debtor has failed to explain how she will be able to make the installment payments this time around, where she previously failed to do so. *Id.* See Dckt. 9.

DISCUSSION

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

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

A. Why was the previous plan filed?

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

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

~~Debtor has / has not 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. While it is clear that Debtor has faced some difficult personal troubles and financial hardships, Debtor fails to show this court that she will succeed in prosecuting this case. Debtor testifies to a worker's compensation payment but fails to provide any additional information. Debtor has been~~

~~unable to remove non-paying tenants but yet bases plan payments on said tenants leaving and finding better ones.~~

At the hearing, **xxxxxxxxxx**

~~The Motion is **xxxxxxxxxx** 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 Christine Bonilla ("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 **xxxxxxxx**, 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.~~

10. 19-27838-E-13 PLC-1 — TIAZJANAE WILRIDGE — Peter Cianchetta — MOTION TO CONFIRM PLAN — 7-23-20 [28]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on July 23, 2020. By the court's calculation, 40 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied.

The debtor, Tiazjanae Imani Wilridge ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for monthly plan payments of $330.00 commencing July 25, 2020 for 60 months, and a 0 (zero) percent dividend for unsecured claims totaling $31,539. Amended Plan, Dckt. 31. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on August 6, 2020. Dckt. 37. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor failed to file supplemental Schedules to reflect change in financial circumstances.

DISCUSSION

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). Trustee notes that in the declaration Debtor testifies to now being employed, yet Debtor has failed file supplemental Schedule I to update employer and income information and updating any expenses on Schedule J. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

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

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

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

11. 20-21045-E-13 NRL-2 | **ANN CONRAD** **Travis Stroud** | **AMENDED MOTION TO CONFIRM PLAN** **7-24-20 [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 Chapter 13 Trustee, creditors, and Office of the United States Trustee. No date is provided on the Certificate of Service except "July _____, 2020." Thus, the court is challenged in calculating the days of notice given. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

In light of the Trustee having filed an Opposition and not asserting that service was insufficient, the court concludes that the typographical error can be waived.

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

The Motion to Confirm the Amended Plan is denied.

The debtor, Ann Conrad ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for monthly plan payments of $784.00, and a 100 percent dividend to unsecured claims totaling $19,931. Motion, Exhibit A, Dckt. 38. *See* also Dckt. 25. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

The Motion was filed on July 24, 2020. Dckt. 38. The latest Amended Plan was filed on May 7, 2020. Dckt. 25.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on August 17, 2020. Dckt. 43. Trustee opposes confirmation of the Plan on the basis that:

A. Forms not filed as separate documents.

B. Debtor fails to provide for secured claim.

C. Debtor mis-classified a secured creditor's claim.

D. Debtor failed to list expenses.

DISCUSSION

Mis-classification of a claim

Debtor's plan classifies the claim of Travis Credit Union as a class 4 claim. Trustee argues that this claim should be listed in Class 1, as creditor's Proof of Claim reflects arrearage in the amount of $1,308.10. Class 4 claims are for claims not in default. Thus, Debtor has mis-classified creditor's claim.

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 declaration states that he will make direct payments for student loans, yet Debtor's Schedule J fails to list student loans and the proposed plan does not include Additional Provisions regarding the loans. In turn, under line 17c and d, for installment or lease payment, of Schedule J, Debtor lists expenses for "QVC" and "Tires." Dckt. 1. Yet, the proposed plan does not include treatment for these expenses. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

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

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

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

12. **20-23172-E-13 DPC-1** **SONDA CHARLTON** **Peter Macaluso** **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 8-12-20 [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 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 August 12, 2020. By the court's calculation, 20 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 failed to appear at the meeting of creditors.

B. Debtor has failed to provide Trustee with copy of tax returns.

C. Debtor fails to account for attorney's fees paid to current counsel.

DISCUSSION

Trustee's objections are well-taken.

Failure to Appear at 341 Meeting

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

Failure to Provide Tax Returns

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

"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 on the basis that Debtor's Statement of Financial Affairs failed to list his current counsel and payment of $1,500 prior to filing of the petition.

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.

13. 20-21381-E-13 PGM-1 13 thru 14

SAMUEL/CHRISTINA SEE
Peter Macaluso

MOTION TO CONFIRM PLAN
7-27-20 [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 Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 28, 2020. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied.

The debtors, Samuel M. See and Christina D. See ("Debtor"), seek confirmation of the Amended Plan. The Amended Plan provides for monthly plan payments of $2,990 commencing August 24, 2020 for 56 months, and a 0 (zero) percent dividend to unsecured claims totaling $15,491.08. Amended Plan, Dckt. 51. 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 18, 2020. Dckt. 60. Trustee opposes confirmation of the Plan on the basis that:

A. Plan exceeds the maximum time allowed by the Code.

B. Debtors may not be able to afford plan payments.

DISCUSSION

Trustee asserts that the Plan will complete in more than the permitted sixty months. According to Trustee, the Plan will complete in 79 months. However, Trustee fails to explain the basis for such calculation.

Failure to Afford Plan Payment

According to Trustee, Debtors may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Trustee notes that Debtors' have proposed plan payments of $0.00 for the first two months and month four of the Plan. *See* Dckts. 12, 51. Yet, Debtors' current Schedule J shows Debtors' disposable income is $2,990.

In their declaration, Debtors explain that they have been unable to make plan payments after Debtor Christina was deemed non-essential and did not qualify for unemployment. Dckt. 50. She is now back to work and Debtors are renting a room to a tenant for $1,000 a month in order to afford their home. *Id*. Debtors have filed amended Schedules I and J adjusting their income to reflect the $1,000 in rental income, and adjusting their food expenses from $400 to $300. Dckt. 56.

SUPPLEMENTAL REPLY

On August 25, 2020, Debtors filed a Supplemental Reply to the continued Motion for Relief filed by creditor Nationstar Mortgage LLC. Dckt. 63. Debtors state that due to a calculation error, Debtor's First Amended Chapter 13 Plan is not feasible as proposed and request a continuance so that Debtors may file, set, serve, and be current under a further amended plan. Dckt. 63.

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

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

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

14. 20-21381-E-13 AP-1 NATIONSTAR MORTGAGE LLC VS.

SAMUEL/CHRISTINA SEE
Peter Macaluso

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
7-2-20 [33]

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 Debtors, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on July 2, 2020. By the court's calculation, 40 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.

Nationstar Mortgage LLC dba Mr. Cooper ("Movant") seeks relief from the automatic stay with respect to Samuel Middlebrook See and Christina D. See's ("Debtors") real property commonly known as 7558 Eastgate Avenue, Citrus Heights, California ("Property"). Movant has provided the Declaration of Chastity Wilson 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 $4,752.78 in post-petition payments past due. Declaration, Dckt. 35.

CHAPTER 13 TRUSTEE'S RESPONSE

David P. Cusick ("the Chapter 13 Trustee") filed an Opposition on July 23, 2020. Dckt. 44. Trustee asserts that Debtor is delinquent $183.46, where Debtor has paid to date a total of $5,295.46. *Id.*, at p. 1. Trustee has disbursed a total of $1,494.01 to Movant. *Id.*, at p. 2. Trustee notes that Movant filed a Proof of Claim on March 29, 2020 for $262,549.30, which indicates the amount necessary to cure any default as of the date of the petition is $26,633.95. *Id.* Trustee has disbursed $0.00 toward pre-petition arrearage. *Id.*

DEBTOR'S RESPONSE

Debtor filed a Reply on July 23, 2020. Dckt. 53. Debtor asserts that Debtors filed, set, and served a Motion to Confirm Debtors' First Amended Chapter 13 Plan on July 27, 2020 that addresses Creditor's assertions in this matter.

A review of the docket shows that Debtor filed a First Amended Plan and a Motion to Confirm on July 27, 2020, which has been set for hearing at 2:00 p.m. on September 1, 2020. Dckt. 47.

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 $268,693.04 (Declaration, Dckt. 35), while the value of the Property is determined to be $380,000.00, as stated in Schedules A/B and D filed by Debtor.

11 U.S.C. § 362(d)(1)

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).

Here, Debtor has set for hearing a Motion to Confirm a Chapter 13 Plan that provides for Creditor's claim, both current monthly payments and curing the arrearage. Dckt. 51. Additionally, Movant has a 41% equity cushion protecting its ability to be paid on its claim, including costs and interest.

11 U.S.C. § 362(d)(2)

A debtor has no equity in property when the liens against the property exceed the property's value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective rehabilitation. 11 U.S.C. § 362(g)(2); *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988); 3 COLLIER ON BANKRUPTCY ¶ 362.07[4][b] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.) (stating that Chapter 13 debtors are rehabilitated, not reorganized).

Based on the Schedules A/B and D, there is a modest equity in the Property above the two claims secured by the Property. No contrary evidence of value has been provided by Movant.

Movant's analysis of their being no equity is based on the immediate liquidation of the Property and deducting out 8% for a seller's costs of sale. However, the Plan does not provide for such liquidation, but for the Debtor to retain the Property, with a $30,000 equity.

CONTINUANCE

The Debtor is prosecuting a plan in this case, with the confirmation hearing being several weeks away. Movant is adequately protected and there is equity (and a large equity cushion for Movant).

While the court could deny the Motion, since a large part of whether relief should be granted turns on Debtor being able to confirm the Plan on September 1, 2020, the court continues the hearing so that Movant will not have to go to the cost and expense of a new motion.

The continuance, rather than denial without prejudice, requires the consent of the Movant. At the hearing, Movant consented to the continuance of the hearing.

SUPPLEMENTAL REPLY

On August 25, 2020, Debtors filed a Supplemental Reply stating that due to a calculation error, Debtor's First Amended Chapter 13 Plan was not feasible as proposed and request a continuance so that Debtors may file, set, serve, and be current under a further amended plan. Dckt. 63.

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 Nationstar Mortgage LLC ("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 **xxxxxx**.

15. **20-23783-E-13 JGD-1** | **BRAD HAMILTON/ CHERISE WILLIAMS** **John Downing** | **MOTION TO EXTEND AUTOMATIC STAY** **8-18-20 [13]**

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 August 18, 2020. By the court's calculation, 14 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.

Brad Alan Hamilton and Cherise Cathleen Williams ("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. 20-20040) was dismissed on July 1, 2020, after Debtor failed to confirm a plan in the case after creditor Reno Real Estate Solutions, Inc. Objected to confirmation of their plan. *See* Order, Bankr. E.D. Cal. No. 20-20040, Dckt. 31, July 1, 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 Debtors could not reach a resolution with the holder of the mortgage, Reno Real Estate Solutions, Inc.

In reviewing the proposed Plan in this case, Debtor will make monthly plan payments of $900.00 a month and Reno Real Estate Solutions, LLC shall be paid on its claim from the sale of

Debtor's residence by the 20th month of the plan. The Plan provides for Reno Real Estate Solutions, LLC to receive a currently monthly payment of $748.00 and then a $50.00 a month payment for the disputed $9,155.00 arrearage.

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

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

A. Why was the previous plan filed?

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

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

Debtor has sufficiently demonstrated the case was filed in good faith/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 Brad Alan Hamilton and Cherise Cathleen Williams ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause

appearing,

IT IS ORDERED that the Motion is granted, and 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.

16.	**20-23896-E-13** **MET-1**	**MILTON PEREZ** **Mary Ellen Terranella**	**MOTION TO EXTEND AUTOMATIC STAY** **8-17-20 [8]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on August 17, 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.

Milton Raul Perez ("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. 20-21908) was dismissed on August 10, 2020, after Debtor failed to make plan payments. *See* Order, Bankr. E.D. Cal. No. 20-21908, Dckt. 30, August 10, 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 he failed to make plan payments after losing his employment due to COVID-19 pandemic and his tenants being unable to make rent payments.

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

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

A. Why was the previous plan filed?

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

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

Debtor has sufficiently demonstrated the case was filed in good faith/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 Milton Raul 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 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.

17. 17-25094-E-13 MET-3 | **DAVID/DOROTHY JONES** | **Mary Ellen Terranella** | **MOTION TO BORROW** | **8-18-20 [58]**

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, and Office of the United States Trustee on August 18, 2020. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The Motion to Incur Debt is granted.

David Jones and Dorothy Mae Jones ("Debtor") seeks permission to purchase a 2019 Mitsubishi Outlander, with a total purchase price of $25,983.62 and monthly payments of $381.68 to Team Ford over five (5) years with a 15.99% fixed interest rate.

Trustee's Response

On August 24, 2020, Trustee filed a Response stating his non-opposition to the transaction due to the unique circumstances in this case. Dckt. 63. Namely, Trustee notes that where Debtors have been paying $1,100 a month for rental vehicle, this expense would be reduced to $381.68 if the court grants this motion. *Id.* at 2.

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).

This is not Debtors' first attempt to obtain a loan approval for a vehicle. The court had previously denied their motion to purchase this vehicle at a 20.89% fixed rate. Debtors have come back with a 15.99% interest rate, a clear explanation as to why a sport utility vehicle is needed, and demonstrated that approval of this loan would considerably reduce their expenses.

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 David Jones and Dorothy Mae Jones ("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 David Jones and Dorothy Mae Jones is authorized to incur debt pursuant to the terms of the agreement, Exhibit A, Dckt. 61.

18. 18-23365-E-13 JB-6 | **TENA ROBINSON** / **Jason Borg** | **MOTION TO MODIFY PLAN** / **7-27-20 [161]**

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 27, 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 denied without prejudice.

The debtor, Tena H. Robinson ("Debtor") seeks confirmation of the Modified Plan to cure default in plan payments caused by a reduction in income and having suffered from medical problems. Declaration, Dckt. 163. The Modified Plan provides for monthly plan payments of $2,450.00 for 21 months, followed by monthly plan payments of $2,360.00 for 15 months, and a 0 (zero) percent dividend to unsecured claims totaling $311,639.79. Modified Plan, Dckt. 158. 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 17, 2020. Dckt. 169. Trustee opposes confirmation of the Plan on the basis that:

A. The Motion does not cite a legal basis for the relief requested.

B. It is not clear why Debtor is seeking modification.

C. Debtor is ahead in payments.

DISCUSSION

There are again significant defects in the Motion to approve this proposed plan. Not only does Debtor again fail to explain why a modified plan is necessary, the Motion fails to state with particularity (Fed. R. Bankr. P. 9013) the grounds for relief. The Motion, in its entirety, states:

> The Debtor moves the court:
>
> 1. Debtor requests that the Second Modified Chapter 13 Plan, a true and correct copy of which has been filed with the court on June 26, 2020, be confirmed by the court.
>
> 2. The Second Modified Plan proposes that the debtor pay $0.00 for the first four months; $2,450 per month for twenty-one months of the plan and $2,360 per month for the remaining fifteen months. The Second Modified Chapter 13 Plan proposes that at least 0% of the unsecured claims are paid through the Plan. The Plan will pay secured claim of Loan Mart and it will pay ongoing mortgage payments to Ocwen Loan Servicing along with an amount sufficient to pay outstanding mortgage arrears. The debtor has sufficient disposable monthly income to pay the required payments as shown by her Schedule I and J and her Declaration that is to be filed in support of the Motion.
>
> 3. All secured creditors provided for have either accepted the plan, or the plan provides to pay the secured creditors pursuant to section 1325(a)(5)(B).
>
> 4. The debtor's Second Modified Chapter 13 Plan is proposed in good faith.
>
> 5. Debtor respectfully requests that the Second Modified Chapter 13 Plan be confirmed.

When matched up to 11 U.S.C. § 1329, which incorporates 11 U.S.C. §§ 1325 and 1322, relief in the form of confirming a modified plan is not shown.

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

As the court reviews the Debtor's Declaration (Dckt. 163), several concerns arise about Debtor providing this testimony under penalty of perjury.

First, Debtor provides her personal finding of fact and conclusion of law that the Plan is proposed in good faith and not by any means forbidden by law. Declaration, ¶ 5; Dckt. 163. There is nothing before the court demonstrating that Debtor has the legal training and experience to provide such legal opinion under penalty of perjury. Further, Debtor's personal finding of good faith does little to

assist the court in considering factual evidence to make such finding and legal conclusion.

Second, Debtor provides her personal factual finding that creditors will receive through the Plan at least as much as they would through a Chapter 7 liquidation. *Id.*, ¶ 6. No factual testimony is provided as to how such liquidation analysis was computed.

Third, Debtor does not appear to understand how she is providing for creditors having secured claims, only generically testifying, "All secured creditors provided for have either accepted the plan, or the plan provides to pay creditors pursuant to section 1325(a)(5)(B)." *Id.*, ¶ 7. This reads like boilerplate text for someone to sign without reading. There is nothing showing that Debtor has the legal knowledge and education to know what "section 1325(a)(5)(B)" imposes.

Fourth, Debtor dictates her conclusion that she can perform the Plan, not offering testimony of her finances, why the prior defaults occurred, and how she can now comply with the payments (if she knows what they are) that would be required under the Plan. *Id.*, ¶ 8.

In paragraph 15 of the Declaration, Debtor states that she is a care-giver for an individual and is paid by the county approximately $3,650 a month. Further, that the person for whom she is paid to be a care-giver also pays her $600 a month for household expenses since he lives in Debtor's residence.

Debtor states that she has $1,479 a month in Social Security benefits, and about $500 a month for "rental property I own." Debtor does not identify this rental property in her Declaration. In paragraph 15, Debtor makes reference to having filed a Supplemental Schedule I on June 14, 2019. Such was filed more than a year ago, but based on Debtor's testimony such information appears to be well out of date.

Debtor testifies that the person she is paid to provide care to has been in and out of the hospital since "the beginning of 2020," and that she is not paid when he is in the hospital. *Id.*, ¶ 15. Further, Debtor testifies that she suffered a serious health event in January 2020, was hospitalized, and it reduced her ability to earn income. *Id.*

Reviewing the Supplemental Schedule I filed in June 2019, it does show Debtor having rental income of $500 for "the 34th Avenue Property." Dckt. 138 at 6. On Schedule J Debtor lists there being a mortgage expense of ($404.44), no property taxes or insurance, ($50.00) of maintenance expense, and ($70.00) for 34th Avenue Water Bill. *Id.* at 8.

What the court does not know is whether this information is currently accurate after multiple hospitalizations and serious health events.

The Debtor fails to state the basis there is to confirm the Modified Plan and thus not complying with 11 U.S.C. § 1329, and not all of the requirements of 11 U.S.C. § 1325 are addressed.

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, Tena H. Robinson ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Motion to Confirm the Modified Plan is denied without prejudice.

19. 19-25166-E-13 HLG-1 — JEANNETTE COPELAND — Kristy Hernandez — MOTION TO MODIFY PLAN — 7-22-20 [19]

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

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

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

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy 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, Jeannette Yvonne Copeland ("Debtor") seeks confirmation of the Modified Plan because her financial situation changed due to the COVID-19 pandemic, namely her expenses have

increased now that she is supporting her partner after he lost his employment. Declaration, Dckt. 21. The Modified Plan provides for monthly plan payments of $2,090.00 until completion of the plan, and a 100 percent dividend to unsecured claims totaling $81,473.75. Modified Plan, Dckt. 23. 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 18, 2020. Dckt. 25. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor made a payment of $2,390.00 when the plan calls for $2,090.00. Thus, Debtor appears able to pay more.

B. Debtor does not provide sufficient information regarding the basis for modification, her boyfriend's loss of employment.

C. Debtor does not provide sufficient explanation for certain expenses.

D. The Motion refers to the sale of a home where Debtor does not appear to own or have owned any property to sell.

DISCUSSION

Debtor filed a Reply to Trustee's concerns on August 25, 2020. Dckts. 28, 29. Debtor testifies that she made the $2,390 because she believed she was supposed to keep making the original $2,726.00 and that was all she could come up with. Declaration, Dckt. 29, ¶ 2. Debtor further testifies that her boyfriend is currently unemployed, is not receiving unemployment, but is looking for new employment. *Id.* ¶ 3. Debtor adds that he will remain dependent on her until he finds new employment and resumes paying for his own expenses. *Id.*

Debtor further explains that her expenses have increased now that her rent increased after she renewed her lease, she is now paying her boyfriend's cell-phone, and the electricity bill increased due to the provider rate increase and her partner being home all day. *Id.* ¶ 5. Debtor clarifies that she owns a French bulldog and has always had pet insurance but that it was added now after a careful review of her expenses for this proposed modified plan. *Id.* Her food expense decreased as she has been carefully managing her expenses and her boyfriend has helped her in finding coupons and food bargains. *Id.*

As to her transportation expenses, Debtor seeks to correct the error in the prior declaration made by her attorney. The correct transportation expenses are $420.00. *Id.* at 6. Moreover, the reference to a home sale was an error by Debtor's counsel as she does not own and has never sold a home. *Id.*

Debtor having addressed Trustee's concerns, 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, Jeannette Yvonne Copeland (“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 22, 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.

20. 20-22540-E-13 RJ-1 | RAKESHNI SHARMA Richard Jare | OBJECTION TO CLAIM OF USRE TRUST, CLAIM NUMBER 1 7-17-20 [57]

APPEARANCES OF RICHARD JARE, ESQ., COUNSEL FOR DEBTOR AND KRISTI WELL, ESQ., COUNSEL FOR RESPONDENT REQUIRED FOR SEPTEMBER 1, 2020 HEARING

TELEPHONIC APPEARANCES ONLY

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, parties requesting special notice, and Office of the United States Trustee on August 2, 2020. By the court's calculation, 30 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.

The Objection to Proof of Claim Number 1-1 of USRE Trust is dismissed without prejudice.

Rakeshni Devi Sharma, Chapter 13 Debtor, ("Objector") requests that the court disallow the claim of USRE Trust ("Creditor"), Proof of Claim No. 1-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of $347,474.47. Objector asserts that the claim is not made by a legally competent real party because the deed of trust which the claimant bases a

secured claim does not designate any beneficiary which is legally competent.

Review of Objection to Claim

The court begins with the Objection to Claim itself. No points and authorities are provided with the Objection. The grounds stated in the Objection to Proof of Claim No. 1-1 are summarized by the court as follows:

A. The Deed of Trust upon which Creditor bases a secured claim does not designate any beneficiary which is a legally competent party. Objection ¶ A, Dckt. 57.

B. Objector directs the court to a prior Ruling in this bankruptcy case in which the court discussed that a "trust" itself is not a proper party in federal or state litigation, but that the trustee of such trust was the real party in interest. *Id.*, ¶ 1.

C. The Objection then shifts from discussing the Deed of Trust to the Note secured by the Deed of Trust, stating:

> Because the obligation is not payable to the "the trustee" then in order for the trustee to make a hypothetical Claim based upon the note presented in the Claim, the claimant may have to prove by clear and convincing evidence that a USRE Trust "did in fact exist."

Id.

D. The Objection then makes reference to a points and authorities in support of the Objection. *Id.* No points and authorities have been filed by Objector.

E. The Objection continues in Paragraph 1 speculating about an internet presence, a person being "somewhat of a wealthy individual," and that Objector can obtain relief without really identifying against whom the relief is requested. *Id.*

F. The Objection continues, making the statement that the Deed of Trust "does not designate any beneficiary which is a legally competent party." *Id.*, First ¶ 2. It is stated that the County Recorder online Index "names USRE as the beneficiary." *Id.*

G. The Objection recycles the statement that the named beneficiary on the Deed of Trust is "not a legally competent real party." *Id.* It then speculates whether the Deed of Trust was presented to the Debtor and signed by the Debtor in obtaining a loan might not be relevant to the validity of the Deed of Trust.

H. The Objection continues to use the phrase that the Claimant must prove by "clear and convincing evidence" that a USRE Trust exists. *Id.* No legal authorities why a "clear and convincing evidence" standard would exist.

I. In the Second Paragraph 2, Objector states without providing the court with any legal authorities that the claim should be disallowed and reclassified as an unsecured claim. *Id.* at 4.

The Testimony in support of the Objection is not provided by the Debtor, the person with first-hand personal knowledge of the transaction, but by Objector's bankruptcy counsel. His testimony consists of telling the court what he "hears" the County Recorder for Sacramento County website say when he reads it. Declaration, ¶ 2, 3, 4, 5; Dckt. 59. He then opines that the court can waive the requirements of the Federal Rules of Evidence if there is no reason to question what is heard to be said from something on the internet.

For Exhibits, Objector includes three screen shots showing what Objector's counsel's eyes saw the County Recorder's website say. The second screen shot documents that (if the court were to accept what Objector's counsel heard the website say) the Sacramento County Recorder in his/her official capacity verifies that USRE Trust is the lender and apparently the 100% owner of the Note and Deed of Trust. Dckt. 60.

Opposition Filed By Charmaine Mark and Matthew Mark as Trustees of USRE Trust

On July 29, 2020, an Opposition by Charmaine Mark and Matthew Mark as Trustee of the USRE Trust ("Respondent") was filed in response to the Objection. Dckt. 71. The Opposition is summarized by the court as follows:

1. Respondent state that they are the creditor for whom Proof of Claim 1-1 has been filed.

2. A declaration has been provided by Charmaine Mark, identified as a trustee of the USRE Trust that has been filed with the Opposition. Opposition, p. 2:5-6; Dckt. 71.

3. Further, that the Declaration provides testimony that:

    a. The USRE Trust is a self-directed retirement trust for employees of the USRE Corporation;

    b. The only two employees are Charmaine Mark and his son Matthew Mark;

    c. There are no other employees of USRE Corporation; and

    d. The purpose of the USRE Trust is to hold and invest retirement funds, including making loans secured by deeds of trust.

    Id., p. 2:6-12.

4. It is stated that the Declaration further states that the USRE Trust loaned money to Objector and obtained a deed of trust, and that trustees of the USRE Trust, Charmaine Mark and Matthew Mark hold the Note and are the beneficiaries under the Deed of Trust. *Id.*, p. 2:13-15.

The Declaration is a dual testimony document of both Charmaine Mark and Matthew Mark, with each of them apparently testifying to everything stated therein under penalty of perjury. Dckt. 7. While a joint declaration, the testimony is written in the singular, such as "I am over the age of 18 years," "I am a Trustee of USRE Trust," and "the Employees of said corporation are myself and my son, Mark Mathews." Declaration, ¶ 2; Dckt. 7. While rushing to get out a declaration filed, one wonders whether either of the persons signing it read the Declaration.

Presumably, when the Declaration says "my son," it is Charmaine Mark who is speaking and not Matthew Mark. However, the court is reluctant to assume things when presented with testimony for which a party and counsel had substantial time to draft and craft that testimony.

Attached (improperly) to the Declaration as Exhibit A is a document identified as the USRE Trust Agreement. Neither the Opposition or the Declaration direct the court to any part of this Agreement as being relevant to the issue before the court and Opposition.

The court notes that the document titled USRE Trust Agreement begins with an unidentified "Company" (an undefined term) "sponsors" the USRE Trust. Exhibit A, p. 2, first WHEREAS paragraph. Wading through the ten pages of the Agreement, the court could not find the designation of any persons as trustees.

On the signature page, there is a signature block for United States Real Estate Corporation, for which it appears that Charmaine Mark has signed, though there is no name typed below the illegible signature and there is no designation of that person's corporate officer position indicating an authority to sign the Agreement.

Then there are signatures for Charmaine Mark and Matthew Mark signing the Agreement under the hearing "TRUSTEES."

The Agreement does state in one of the WHEREAS paragraphs on page 1, ""WHEREAS the [unidentified] Company has designated the Trustee [unidentified] to act as the trustee of the Plan [the USRE Trust] . . . ." *Id.*, p. 1, third WHEREAS paragraph. This indicates that at some time before the Agreement was made, a trustee was designated by the "Company." That designation document for "the Trustee" has not been provided.

In looking at Article VIII of the Agreement, it provides for resignation and removal of "The Trustee" for the Trust. It states that the "Company" may remove a trustee and the "Company" appoints successor trustees.

Subsequent Points and Authorities
Filed by Objector

On August 2, 2020, after the Opposition had been filed and sixteen days after the Objection was filed, Objector filed a Points and Authorities and Declaration. Dckt. 73, 74. The Points and Authorities states that because counsel for the Objector did NOT (emphasis in original) call for a briefing schedule, Objector did not need to file a points and authorities until after Creditor filed the Opposition. Objector shows no legal basis for Objector's counsel setting the procedures for litigating in federal court.

Local Bankruptcy Rule 3007-1 expressly provides the following for objections to proofs of claim filed in the Eastern District of California:

> LOCAL RULE 3007-1
> Objections to Proofs of Claim
> (a) An objection to a proof of claim shall include the name of the claimant, the date the proof of claim was filed with the Court, the amount of the claim, and the number of the claim as it appears on the claims register maintained by the Court. Unless the basis for the objection appears on the face of the proof of claim, the objection shall be accompanied by evidence establishing its factual allegations and demonstrating that the proof of claim should be disallowed. A mere assertion that the proof of claim is not valid or that the debt is not owed is not sufficient to overcome the presumptive validity of the proof of claim. . . .

Additionally, Local Bankruptcy Rule 9014-1 applies to "contested matters," which include objections to claims (Fed. R. Bankr. P. 9014, see 10 Collier on Bankruptcy ¶ 9014.01, unless joined with relief for which an adversary proceeding is required pursuant to Fed. R. Bankr. P. 7001 as specified in Fed. R. Bankr. P. 3007). Local Bankruptcy Rule 9014-1(d) expressly states:

> (d) Format and Content of Motions and Notices.
>
> 1) Contents. Except as otherwise provided in these rules, every application, motion, contested matter or other request for an order, shall be comprised of a **motion, or other request for relief**, notice, evidence, and a certificate of service. Unless otherwise ordered, **the moving party may**, but need not, **file a memorandum of points and authorities** in support of the motion. Opposition to any request for relief shall be governed by the same principles.
> . . .
> 3) Component Parts.
>
> A) Motion or Other Request for Relief. The application, motion, contested matter, or **other request for relief** shall set forth the relief or order sought and shall state with particularity the factual and legal grounds therefor. **Legal grounds for the relief sought means citation to the statute, rule, case, or common law doctrine** that forms the basis of the moving party's request but does not include a discussion of those authorities or argument for their applicability.
> . . .
> C) Memorandum of Points and Authorities. If filed, the memorandum of points and authorities shall be a succinct and reasoned explanation of the moving party's entitlement to relief. Memorandum of points and authorities in excess of 10 pages shall include a table of contents and table of authorities.

<u>Review of Untimely Points and Authorities</u>
<u>Filed by Objector</u>

The legal points and authorities does not point the court to any legal authorities, whether statutory or case law, in support of the Objection. It consists only of Objector's counsel repeating the contentions in the Objection.

Reply to Untimely Points and Authorities

The Respondent filed a "Reply" to the untimely points and authorities. No basis is given for filing such further pleading by Respondent. The "Reply" merely states that the untimely points and authorities contains not legal points and authorities.

Further Untimely, Additional, Unauthorized Pleadings Filed By Objector

Not willing to rest on the prior authorized and unauthorized pleadings, Objector files a second "Reply" to the Opposition. Dckt. 79. Objector does cite to a California Court of Appeals decision and then has three pages of cut and paste text from this court's prior decision. Then there is another document titled Points and Authorities in Reply to Opposition. Dckt. 82. It is argued that a "deed" is void if not signed.

Objector's counsel files a second declaration in which he seeks to tell the court what he sees when he reads the County of Sacramento Recorder website. Dckt. 81. What is filed as an Exhibit for what counsel is testifying to, appears to be from the California Department of Real Estate website. Dckt.80.

FILING OF AMENDED PROOF OF CLAIM

On July 28, 2020, Amended Proof of Claim No. 1-2 was filed, with the creditor stated to be "Charmaine Fay Maria Mark and Matthew Stanton Mark, Trustees of USRE TRUST." POC 1-2, Part 1, § 1. Given that Proof of Claim 1-1 is the subject of this contested matter, it is unclear how an amendment can be filed to defeat the objection now before the court.

Attached to Amended Proof of Claim 1-2 is a promissory note dated July 11, 2019. POC 1-2, p. 7. In the first paragraph Objector states that he is obligated to pay the person identified as Beneficiary. On its face, there is an obligation to pay someone who will be identified as beneficiary. It is further stated that "Beneficiary" is as identified on Exhibit D.

Exhibit D attached to POC 1-2, p. 10, identifies "Lender" as being USRE Trust.

The next document attached to POC 1-2 is a Deed of Trust, in which Objector is identified as the Borrower and Lender "is Exhibit D" and the beneficiary under the Deed of Trust. *Id.*, p. 11. The Deed of Trust secures the July 11, 2019 Note.

APPLICABLE LAW

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.

Once a party has objected to a proof of claim, the creditor asserting the claim may not withdraw the claim except on order of the court. FED. R. BANKR. P. 3006.

DISCUSSION

Debtor bases her objection upon the argument that claimant is not a legal competent real party and the deed of trust upon which the claimant bases a secured claim does not designate any beneficiary that is a legally competent party. Motion, at 2. In support of this contention, Debtor refers to the court's argument for claimant's Motion for Relief from the Automatic Stay.

The court's minutes for claimant's Motion for Relief from the Automatic Stay discussed that only the trustee of a trust may bring an action. *See* Minutes, Dckt. 46. The court concluded that the Trust as Movant was not real party in interest and thus did not have standing to seek relief from the court. *Id.* at 10. Noting that the trustee as the fiduciary of the trust was nowhere to be found. *Id.* The court also noted that the documents did not identify the beneficiary under the deed of trust but listed USRE Trust as the "lender" with 100% ownership. *Id.* at 11. Based partly on there being no proper real party in interest and the potential need for judicial determination of who is the trustee and who actually owns the note, the court denied the motion for relief. *Id.*

Debtor further asserts that even if trustee would be the proper party, it might be too late for the trustee to make a secured claim based upon the deed of trust presented in the claim because an intervening event has occurred, the filing of the bankruptcy. Motion, at 3. Debtor contends:

> There is authority for the contention that if perfection of a security interest is defective, and the obligor files bankruptcy, the bankruptcy may prevent the claimant from correcting the defects in the grant of a security interest. The points and authorities in support of this Objection support the contentions of the debtor.

Motion, at 3-4. No such points and authorities exist for this Motion, as the "Points and Authorities" filed on August 3, 2020, contain the same arguments as the motion and references to envying the real property owned by USRE Trust's authorized representative.

In the "Points and Authorities," the Debtor notes that the deed of trust presented continues to designate the beneficiary as USRE Trust, which is not a legally competent party. Reply, Dckt. 73, at ¶ 2. Debtor argues that this might be intentional or accidentally as an act to mislead the court. Again, Debtor restates that because the deed lacks a beneficiary, the secured claim should be disallowed and determined to be an unsecured claim. *Id.*

Debtor filed a Reply suggesting a new briefing schedule to address the issues arising from Creditor's amended proof of claim. Dckt. 79. Debtor reinstates her arguments that the deed presented by creditor does not specify a beneficiary and thus the deed is defective. Further arguing that designating a beneficiary via attachment is "quite suspect." *Id* at 2. Debtor also finds suspect "Superior Loan Servicing" as both the lender and trustee and that such "reflects a unity of interest problem, that

'Superior Loan Servicing' should not be in the position of being trustee." *Id.* at 3, 2-3. Debtor also asserts that according to the DRE website, Superior Loan Servicing is an entity involved in "numerous disciplinary matters." *Id*., 4-5.

DISMISSAL WITHOUT PREJUDICE

As discussed above, the Objection was filed without any supporting evidence or law. While counsel for Objector wants to tell the court what he hears webpages on the internet say to him, the court does not waive the Federal Rules of Evidence.

Respondent identify themselves as the trustee of the USRE Trust, but no documentation of that is provided. The Trust Agreement purports there to be some prior document appointing Charmaine Mark and Matthew Mark as trustees, but it is not provided.

Further, though making legally unsupported statements that the Deed of Trust is void, Objector admits that the Note made to the same person, USRE Trust, is not void and is an obligation for which USRE Trust is to be allowed claim. If admitting the Note is not void, the court is uncertain how the Objector (subject to the certifications made pursuant to 9011) can assert that the Deed of Trust is void.

The Deed of Trust transfers the interest in the property (the power of sale) to Superior Loan Servicing. It does not appear that there is no contention that Superior Loan Servicing cannot be the trustee under the Deed of Trust. It may be that the only question is who has the right to have Superior Loan Servicing conduct a non-judicial foreclosure sale under the deed of trust.

It may well be that Respondent (or the persons who drafted the Note and Deed of Trust) may need to have the Note and Deed of Trust reformed to accurately state the lender/beneficiary parties for the transaction that the Objector and the trustees of the USRE Trust entered into. Or it may be that under applicable California law the lender and beneficiary can be shown as the trust. The court's prior ruling did not determine this issue, but concerned whether a trust could be a party in a state or federal court proceeding, and determined that it was the trustee who had to be a party. Civil Minutes, Dckt. 46. [FN. 1]

FN. 1. In reviewing the Civil Minutes, the court noted that Debtor's conduct in prosecuting the case was similarly deficient to the present Objection, with the court stating, "The Debtor has presented the court with some arguments and assertions, but little law to go with it." *Id.*, p. 11.

Federal court proceedings are not an opportunity to file incomplete pleadings, then attempt to "fix them" after the fact. The court will not "promote" such conduct by ignoring the pleading rules and make Objector's counsel follow the rules "only when caught."

The court dismisses the Objection without prejudice, not having been provided any law or other basis to disallow it. Further, Respondent has not provided a basis for disallowing the Objection with 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 Objection to Claim of USRE Trust ("Creditor"), filed in this case by Rakeshni Devi Sharma, 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 1-1 of Creditor is dismissed without prejudice.

FINAL RULINGS

21.	**20-22871-E-13** **DPC-1**	**DOUGLAS/KIM JACOBS** **Scott Schumaker**	**AMENDED OBJECTION TO DISCHARGE BY DAVID P. CUSICK** **7-31-20 [43]**

Pursuant to order of this court, the Objection to Discharge filed by Chapter 13 Trustee on July 27, 2020 was granted on August 25, 2020. Thus, this Amended Objection to Discharge by Chapter 13 Trustee is dismissed, and removed from the calendar.

22. **20-23209-E-13 DPC-1** **ANDREW/DIANE GARCIA** **Harry Roth** **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **8-13-20 [31]**

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

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 August 13, 2020. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

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

The hearing on the Objection to Confirmation of Plan is continued to 2:00 p.m. on September 29, 2020, to allow the Chapter 13 Trustee to conclude the First Meeting of Creditors.

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

A. Debtors have not yet been examined as required under 11 U.S.C. § 341.

B. Debtors' Plan fails the Chapter liquidation analysis based on non-exempt assets.

C. Debtors' plan relies on pending Motion to Value Collateral.

D. Debtors have failed to provide Trustee with a copy of their most recent pre-petition tax year for which a return was required.

DISCUSSION

Failure to be Examined

Debtor Diane appeared at the August 6, 2020; however, she did not have a photo

identification to verify her identity for purposes of examination. Moreover, Debtor Andrew did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. According to the Trustee, Debtor Andrew was recovering after being discharged from the hospital. Thus, the Trustee felt it was in their best interest not to proceed with the examination, and the meeting was continued to September 10, 2020, at 1:00 p.m.

Trustee filed a Supplement to the Objection on August 25, 2020. Dckt. 44. Trustee informs the court that the stated objections have been solved in Debtors' favor as Debtors have filed Amended Schedules A/B and C solving non-exempt equity issues; Debtors' Motion to Value the claim of Westlake Financial was granted; and Trustee has been provided with a copy of the 2012 tax return.

Trustee thus requests the court continue the hearing until September 29, 2020 to give the Trustee the opportunity to examine both debtors at the continued September 10, 2020 Meeting of Creditors.

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 hearing on the Objection to Confirmation of Plan is continued to 2:00 p.m. on September 29, 2020, to allow the Chapter 13 Trustee to conclude the First Meeting of Creditors.

23. **20-23173-E-13 DPC-1** **ROXANNE BROCK** **Mikalah Liviakis** **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **8-12-20 [14]**

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

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 August 12, 2020. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

The hearing on the Objection to Confirmation of Plan is continued to 2:00 p.m. on September 29, 2020.

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

A. Trustee has not completed his review of Debtor's financials on the basis that Debtor has not yet filed 2018 tax returns.

B. Debtor has failed to amend her Schedules to reflect actual income and current expenses.

DISCUSSION

Trustee's objections are well-taken.

Failure to Afford Plan Payment

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor's current Schedule I states that she is unemployed but lists projected income of $5,000, with a projected $1,000 in rental expenses and a $600 "rent in Michigan for job" expenses in line 21 of Schedule J. Dckt. 1. The Debtor has failed to amend Schedules I and J to reflect her actual

income after testifying at the First Meeting of Creditors that she is a traveling nurse and obtained a job in Louisiana where her rent is $1,500, which is $500 higher than the projected rent on Schedule I. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Failure to File Tax Returns

Debtor admitted at the Meeting of Creditors that the federal income tax return for the 2018 tax year has not been filed still. 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).

Trustee provided Debtor with additional time to file the 2018 tax returns and the meeting of creditors has been continued to September 17, 2020 at which time Debtor must have filed the returns and provide Trustee with copies.

Trustee requests the court continue the confirmation hearing to September 29, 2020, after the continued meeting of creditors to give the Trustee time to assess the feasibility of the plan.

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 hearing on the Objection to Confirmation of Plan is continued to 2:00 p.m. on September 29, 2020.

24. **20-22979-E-13 SMJ-1** **JUSTIN/ERICA WILLIAMS** **Scott Johnson** **MOTION TO CONFIRM PLAN** **7-24-20 [19]**

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's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 24, 2020. By the court's calculation, 39 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Justin Matthew Williams and Erica Susan Williams ("Debtor") have provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on August 18, 2020. Dckt. 26. 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, Justin Matthew Williams and Erica Susan Williams ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Debtor's Amended Chapter 13 Plan filed on July 24, 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.

25. **20-23694-E-13 TLA-1** **JOSHUA/MICHELE BARTUCCA** **Thomas Amberg** **MOTION TO VALUE COLLATERAL OF ALLY BANK** **8-3-20 [10]**

Final Ruling: No appearance at the September 1, 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 Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on August 3, 2020. By the court's calculation, 29 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 Ally Bank ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $18,554.00.

The Motion filed by Joshua Michael Bartucca and Michele Christine Bartucca ("Debtor") to value the secured claim of Ally Bank ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 12. Debtor is the owner of a 2016 Jeep Cherokee ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $18,554.00 as of the petition filing date. [FN.1] 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).

FN.1. Debtor's Motion sough to value the Vehicle at $20,000. Dckt. 10. After Trustee filed an

Opposition, Debtor replied by correcting the valuation and thus Debtor seeks to value the Vehicle at $18,554.00, consistent with Creditor's proof of claim. Dckt. 18. The court applies that amount, since it is the amount consistent with the prima facie evidentiary value of the Proof of Claim filed by Creditor.

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on June 28, 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 $27,643.13. Proof of Claim, No. 3-1. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of $18,554.00, 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 Joshua Michael Bartucca and Michele Christine Bartucca ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Ally Bank ("Creditor") secured by an asset described as 2016 Jeep Cherokee ("Vehicle") is determined to be a secured claim in the amount of $18,554.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $18,554.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

26. **19-26096-E-7 RJ-7** | **CHRISTOPHER MCINTOSH** **Richard Jare** | **MOTION TO VALUE COLLATERAL OF EMPLOYMENT DEVELOPMENT DEPARTMENT OF CA AND/OR MOTION TO AVOID LIEN OF EMPLOYMENT DEVELOPMENT DEPARTMENT OF CA** **7-29-20 [108]**

CASE CONVERTED TO CHAPTER 7 ON 8/5/20

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

Christopher G. McIntosh ("Debtor") having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Motion to Value Secured Claim / Motion to Avoid Lien was dismissed without prejudice, and the matter is removed from the calendar.**