UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

January 12, 2021 at 2:00 p.m.

1.	**20-24837-E-13** **DPC-1**	**MIRANDA WHEELER** **Peter Macaluso**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **12-10-20 [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 December 10, 2020. By the court's calculation, 33 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is xxxxx.

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 may not have sufficient income to fund the plan.

DISCUSSION

Trustee's objections are well-taken.

Delinquency

Debtor is $765.05 delinquent in plan payments, which represents one month of the $765.05 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).

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). According to Trustee, the Plan may not be feasible on the basis that there may not be sufficient income to support proposed plan payments since Debtor identifies as a salon owner and Debtor admitted at the Meeting of Creditors that her business has been drastically affected by the COVID-19 related lockdowns. Trustee is uncertain if the business is currently open or closed.

Additionally, according to Trustee, Debtor admitted at the Meeting of Creditors that in August 2020 her non-filing spouse borrowed $23,000 from his current employer's retirement plan for which there is a weekly deduction of $164.44 per pay period. This deduction of income is not reflected on Schedule I.

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

Debtor filed a Response on January 4, 2021. Dckt. 19. Debtor asserts having cured the delinquency by remitting two payments of $765.05, one on December 28, 2020 and other one on December 29, 2020. *Id.*, ¶ 1.

At the hearing, Trustee xxxxxxxx

In the response, Debtor also asserted filing modified Schedules I and J to address Trustee's objection. *Id.*, ¶ 2.

Debtor filed Supplemental Schedules I and J on January 4, 2021. Dckt. 21. Supplemental Schedule I now reflects in Line 5d a "required repayment of retirement fund loans" in the amount of $712.57 for Debtor 2. *Id.*, at 5. It also lists $2,250.00 under Line 8d for "unemployment compensation" for Debtor 1. *Id.* Supplemental Schedule J also reflects several reductions in expenses: home maintenance from $100.00 to $44.00; transportation from $650.00 to $300.00; entertainment from $100.00 to $0.00; charitable contributions from $17.00 to $0.00; and taxes (ongoing self employment taxes as described) from $500.00 to no longer being listed under Line 16 for taxes. *Id.*, at 5.

The Plan complies / does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is overruled / 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 is overruled, and Miranda Wheeler's ("Debtor") Chapter 13 Plan filed on October 19, 2020, is confirmed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

2. **18-24446-E-13** **HAEJA KOH** **MOTION FOR HARDSHIP DISCHARGE**
BLG-5 **Chad Johnson** **12-7-20 [92]**

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

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, and Office of the United States Trustee on December 7, 2020. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

The Motion for Entry of Hardship Discharge is granted.

Haeja Koh ("Debtor") moves for entry of a hardship discharge on the grounds that Debtor has encountered circumstances for which she should not be held accountable, namely, losing her eligibility for any further state disability which ends on January 31, 2021. Debtor argues that disability being her sole source of income, Debtor will encounter extreme hardship.

Debtor filed a Declaration and Exhibits in support of the relief requested. Dckts. 96, 97.

APPLICABLE LAW

Section 1328(b) of the Bankruptcy Code states:

> Subject to subsection (d), at any time after the confirmation of the plan and after notice and a hearing, the court may grant a discharge to a debtor that has not completed payments under the plan only if–
>
> > (1) the debtor's failure to complete such payments is due to circumstances for which the debtor should not justly be held

accountable;

(2) the value, as of the effective date of the plan, of property actually distributed under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 of this title on such date; and

(3) modification of the plan under section 1329 of this title is not practicable.

The provisions of 11 U.S.C. § 1328(b) are written conjunctively and must all be satisfied to grant a hardship discharge. *See, e.g.*, *In re Cummins*, 266 B.R. 852, 855 (Bankr. N.D. Iowa 2001). Debtor has the burden or proving each of those elements. *Spencer v. Labarge (In re Spencer)*, 301 B.R. 730, 733 (B.A.P. 8th Cir. 2003). "Unsubstantiated and conclusory statements" about a debtor's inability to afford plan payments anymore are insufficient when considering a motion for a hardship discharge. *See, e.g.*, *In re Dark*, 87 B.R. 497, 498 (Bankr. N.D. Ohio 1988).

Some courts have looked for a catastrophic event to justify a hardship discharge, but others have relied upon the plain meaning of 11 U.S.C. § 1328(b) to determine whether a "debtor is justly accountable for the plan's failure." *In re Bandilli*, 231 B.R. 836, 840 (B.A.P. 1st Cir. 1999). Determining whether a debtor is justly accountable is fact-driven, and some considerations include:

A. Whether the debtor has presented substantial evidence that he or she had the ability and intention to perform under the plan at the time of confirmation;

B. Whether the debtor did materially perform under the plan from the date of confirmation until the date of the intervening event or events;

C. Whether the intervening event or events were reasonably foreseeable at the time of confirmation of the Chapter 13 plan;

D. Whether the intervening event or events are expected to continue in the reasonably foreseeable future;

E. Whether the debtor had control, direct or indirect, of the intervening event or events; and

F. Whether the intervening event or events constituted a sufficient and proximate cause for the failure to make the required payments.

Id.

At least one court has found that an economic hardship (i.e., lost business revenue and increased expenses) is not the kind of event "such as death or disability which prevent[s] a debtor, through no fault of his or her own, from completing payments." *In re Nelson*, 135 B.R. 304, 306 (Bankr. N.D. Ill. 1991).

Sub-section 11 U.S.C. § 1328(b)(1) "requires that the circumstances leading to the debtor's failure to make payments be beyond the debtor's control." *In re Cummins*, 266 B.R. at 855. Such aggravating circumstances need to be "truly the worst of the awfuls—something more than just the temporary loss of a job or a temporary physical disability." *In re Nelson*, 135 B.R. at 307 (citation omitted).

The second portion of 11 U.S.C. § 1328(b) requires that unsecured claims receive no less than they would have through Chapter 7 liquidation. That is called the "best interests" test that is identical to Chapter 13 plan confirmation in 11 U.S.C. § 1325(a)(4). *In re Cummins*, 266 B.R. at 856 (citations omitted). If an unsecured claim would not receive a distribution through Chapter 7, then any payment from a Chapter 13 plan satisfies that requirement. *Id.* (citing *In re Nelson*, 135 B.R. at 308).

Finally, 11 U.S.C. § 1328(b)(3) requires that modifying the Chapter 13 plan not be practicable. Proposing a modified plan "is not 'practicable' if there is no source of income to fund the modified plan." *Id.* (citing *In re Bond*, 36 B.R. 49, 51 (Bankr. E.D.N.C. 1984)).

The Ninth Circuit has instructed that "[n]othing in the Code compels a bankruptcy court to close, rather than dismiss, a Chapter 13 case when a debtor fails to complete [a] plan." *HSBC Bank USA, N.A. v. Blendheim (In re Blendheim)*, 803 F.3d 477, 496 (9th Cir. 2015). Furthermore, "the availability of case closure does not eliminate a bankruptcy court's duty to ensure that a debtor complies with the Bankruptcy Code's 'best interests of creditors' test, 11 U.S.C. § 1325(a)(4), and the good faith requirement for confirming a Chapter 13 plan." *Id.* The Ninth Circuit found explicitly that a "bankruptcy court [had] properly conditioned permanent lien-voidance upon the successful completion of the Chapter 13 plan payments. If the debtor fails to complete the plan as promised, the bankruptcy court should either dismiss the case or, to the extent permitted under the Code, allow the debtor convert to another chapter." *Id.*

DISCUSSION

Debtor has demonstrated to the court that the elements of 11 U.S.C. § 1328(b) have been met. While some courts have required that a debtor face a catastrophe, that is not a requirement.

In her Declaration, Debtor testifies that on October 2020 she was informed that she had exhausted her state disability benefits. Debtor also explains that her doctor recently re-evaluated her and determined that based on her current condition, she is not medically able to work. Debtor has filed and properly authenticated her doctor's evaluation. *See* Exhibit B, Dckt. 96. Debtor further testifies that based on the doctor's evaluation she is unable to return until at least June 30, 2021, and so she needs to be able to use the last few months of income to save up for her day to day expenses in preparation for this loss. Due to this uncertainty regarding her income and health issues, Debtor asserts that she is not able to propose a feasible plan.

Valuation of Secured Claim

In this case, Debtor has not attempted to use 11 U.S.C. § 506(a) to accomplish a lien strip, but has used it to discount the amount of the claim secured by her vehicle. With the granting of the hardship discharge Debtor is not completing her sixty month plan, is not fulfilling the modified contract (confirmed plan) terms. Debtor may be facing the creditor demanding payment of the entire $22,583.71

obligation pursuant to the terms of the original obligation.

In this case, Debtor's loss of her disability income prevents Debtor from complying with and completing the Plan. The Motion is granted, and a hardship discharge under 11 U.S.C. § 1328(b) is entered for Debtor in this case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Hardship Discharge filed by Haeja Koh ("Debtor") having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and the court shall enter a "hardship" discharge pursuant to 11 U.S.C. § 1328(b) for Haeja Koh in this case based on the Plan as performed as of the January 12, 2021 hearing date on this Motion.

3. **20-24660-E-13** **FRANCISCO SOLORIO** **MOTION TO CONFIRM PLAN**
SLE-2 **Steele Lanphier** **11-2-20 [20]**
3 thru 4

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 November 2, 2020. By the court's calculation, 71 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, Francisco Javier Solorio ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for monthly plan payments of $3,250 for 60 months and a 0% dividend to unsecured claim totaling $42,924.86. Amended Plan, Dckt. 25. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on December 23, 2020. Dckt. 41. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor filed two consecutive Chapter 13 plan on the same day which appear almost identical.

B. Plan relies on a not yet filed Motion to Value Collateral and Motion to Avoid a Lien.

C. Debtor's Plan may not be Debtor's best efforts.

D. Debtor's Plan fails the liquidation analysis.

E. Debtor is a serial filer.

DISCUSSION

Two Plan Filed

Debtor filed two consecutive Chapter 13 Plans with the Court on November 2, 2020, which appear almost identical, Dckts. 24, 25. The Chapter 13 Trustee argues that Debtor must verify and confirm which plan is the subject for the motion to confirm.

Debtor's Reliance on Motion to Value Secured Claim

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of Ally Financial. Debtor has failed to file a Motion to Value the Secured Claim of Ally Financial, however. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

Additionally, the Chapter 13 Trustee argues that Debtor cannot comply with the plan because the Plan relies on a Motion to Avoid the Lien for the secured claim of Capital One Bank. However, Debtor has failed to file a Motion to Avoid the Lien of Capital One Bank. Without the court avoiding the lien, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

Not Best Effort

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

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

The Debtor claims to be below median income; although, it appears the Debtor may be over median income and could have additional disposable income to pay toward the Plan. Form 122C-1 indicates that the Debtor's current monthly income is $9,500.00 per month, or $114,000 annually. The Debtor is claiming six (6) people in the household, for a median family income of $119,315.00. According to the Trustee, the Debtor admitted at the First Meeting of Creditors that two of his children moved out of his residence in June 2020, and his dependents dropped from 6 people to 4 people. If the Debtor were to claim four (4) people as the correct median family income, it would decrease total to $101,315.00.00, which brings the Debtor over the median.

This Bankruptcy Case was filed on October 5, 2020 - four months after two of the children had moved out of the house. On Schedule J, filed on November 2, 2020, five months after the two children moved out, Debtor lists having four adult children who are dependents - ages 18, 20, 22, 24.

Dckt. 27. No contribution of any income is shown for any of the four adult children on Schedule I. *Id*.

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 Plan proposes to pay no less than a 0% dividend to unsecured creditors in 60 months; however, the Trustee believes that the value of the residence may be understated based on a preliminary value search on real property through Realtor.com ($351,200) and Redfin.com ($354,958). On Schedule A/B, Debtor values the residence at $248,400. Dckt. 27. Thus, Trustee has requested Debtor provide a written valuation of the property.

Serial Filer

The Chapter 13 Trustee further opposes confirmation on the basis that Debtor is a serial filer with two prior Chapter 13 cases in 2018 and 2020 and where Debtor has failed to explain why this case will succeed when the two prior ones did not.

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, Francisco Javier Solorio ("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.

4. **20-24660-E-13 SW-1** **FRANCISCO SOLORIO** **Steele Lanphier** **OBJECTION TO CONFIRMATION OF PLAN BY ALLY FINANCIAL** **11-25-20 [35]**

Final Ruling: No appearance at the January 12, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on December 4, 2020. By the court's calculation, 39 days' notice was provided. 28 days' notice is required.

The Objection to Confirmation of Plan 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 Objection to Confirmation of Plan is sustained.

Ally Financial ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

A. Debtor does not provide the correct interest rate for Creditor's loan.

B. Debtor fails to provide for the full value of its claim.

C. Debtor fails to provide Creditor with adequate protection payments.

DISCUSSION

Creditor's objections are well-taken.

Interest Rate

Creditor objects to the confirmation of the Plan on the basis that the Plan calls for adjusting the interest rate on its loan with Debtor to 5.00%. Creditor's claim is secured by a 2015 Dodge Charger. Creditor argues that this interest rate is outside the limits authorized by the Supreme Court in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). In *Till*, a plurality of the Court supported the "formula approach" for fixing post-petition interest rates. *Id.* Courts in this district have interpreted *Till* to require the use of the formula approach. *See In re Cachu*, 321 B.R. 716 (Bankr. E.D. Cal. 2005); *see also Bank of Montreal v.*

Official Comm. of Unsecured Creditors (In re American Homepatient, Inc.), 420 F.3d 559, 566 (6th Cir. 2005) (*Till* treated as a decision of the Court). Even before *Till*, the Ninth Circuit had a preference for the formula approach. *See Cachu*, 321 B.R. at 719 (citing *In re Fowler*, 903 F.2d 694 (9th Cir. 1990)).

The court agrees with the court in *Cachu* that the correct valuation of the interest rate is the prime rate in effect at the commencement of this case plus a risk adjustment. Because the creditor has only identified risk factors common to every bankruptcy case, the court fixes the interest rate as the prime rate in effect at the commencement of the case, 3.25%, plus a 1.25% risk adjustment, for a 4.50% interest rate. The objection to confirmation of the Plan on this basis is sustained. *See* 11 U.S.C. § 1325(a)(5)(B)(ii).

Debtor's Reliance on Motion to Value Secured Claim
(No Motion to Value Filed)

Creditor further objects on the basis that the Plan does not provide for the full value of its claim in violation of 11 U.S.C. § 1325(a)(5)(B)(ii). Creditor asserts that the correct value is $22,025 as stated in the NADA Guide, Exhibit A. *See* Dckt. 37.

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of Creditor as it lists Creditor's claim as a Class 2(B). Debtor's plan states a value for the Vehicle of $11,500. However, Debtor has failed to file a Motion to Value the Secured Claim of Creditor. Without the court valuing the claim, the court finds that the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

Lack of Adequate Protection Under the Plan

Moreover, Creditor alleges that the Plan violates 11 U.S.C. § 1325(a)(5)(B)(iii) because the amount of the periodic payments it proposes to pay Creditor are insufficient to provide it with adequate protection during the period of the Plan.

Neither the Ninth Circuit nor any of its sister circuits has considered the meaning of the phrase "adequate protection" as it is used in 11 U.S.C. § 1325 (perhaps unsurprisingly because the phrase was only added to the section by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005). Several bankruptcy courts that have considered the issue, however, have found that payments to creditors with secured claims under § 1325 must always at least equal the amount of depreciation of the collateral. *See, e.g.*, *In re Sanchez*, 384 B.R. 574, 576 (Bankr. D. Or. 2008); *Royals v. Massey (In re Denton)*, 370 B.R. 441, 448 (Bankr. S.D. Ga. 2007). The court will apply this rule.

Creditor asserts it is entitled to a $452.50 monthly payment and estimates the value of its collateral at $22,025.00. The Plan provides only for a $246.00 monthly payment. Creditor has not submitted a declaration as part of its Objection to Confirmation of Debtor's Chapter 13 Plan. Instead Creditor filed as Exhibit A, a copy of the NADA Guide which states $22,025 as the value for the Vehicle. Dckt. 37. No declaration properly authenticating this report is provided. In the absence of any proper evidence, the court cannot accept Creditor's argument under 11 U.S.C. § 1325(a)(5)(B)(iii) and does not sustain the Objection on this basis.

There being no court valuation of the secured claim pursuant to 11 U.S.C. § 506(a), Creditor's Proof of Claim is prima facie value of the claim. Here, Debtor's Plan does not provide for payment of that claim. This is not a question of "adequate protection," but Debtor failing to properly

provide for payment of a secured claim.

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 Ally Financial ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

5. **20-22871-E-13 SS-3** **DOUGLAS/KIM JACOBS** **Scott Shumaker** **MOTION TO CONFIRM PLAN** **11-16-20 [68]**

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

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

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 16, 2020. By the court's calculation, 57 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The service is not sufficient in that Debtor has not served Freedom Mortgage Corporation (Creditor holding secured claim, Proof of Claim No. 1-1.)

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, Douglas Paul Jacobs and Kim Marie Jacobs ("Debtor"), seek confirmation of the Amended Plan. The Amended Plan provides for one plan payment in the amount of $4,500 for November 2020, followed by plan payments of $5,751 beginning in month 6 and continuing through month 60, and a 0% dividend to unsecured claims totaling $25,000. Amended Plan, Dckt. 70. 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 December 16, 2020. Dckt. 90. Trustee opposes confirmation of the Plan on the basis that:

A. The Plan will complete in 72 months.

B. The plan may not be feasible.

C. Debtor is delinquent in plan payments.

DISCUSSION

Failure to Complete Plan Within Allotted Time

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Chapter 13 Trustee, the Plan will complete in 72 months due to claims being filed for amounts higher that the Debtors scheduled. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

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). According to the Chapter 13 Trustee, at the Meeting of the Creditors, the Joint Debtor testified that she is no longer employed. Further, Debtors testified that they will no longer continue to have a storage expense of $150.00. The Trustee requested that Schedules I and J be amended to reflect correct income and expenses. To date, no amendments have been filed with the court. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Delinquency

The Chapter 13 Trustee asserts that Debtor is $4,500.00 delinquent in plan payments, which represents one month of the $4,500.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

The 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, Douglas Paul Jacobs and Kim Marie Jacobs ("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.

6. **20-25072-E-13 RJM-1** **RICHARD MYRE** **OBJECTION TO CONFIRMATION OF PLAN BY LAUREN C. HAYES**
Judson Henry
6 thru 7 **12-17-20 [17]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on December 17, 2020. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is xxxxxxx.

Lauren C. Hayes ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

A. Debtor misclassified Creditor's claim as an unsecured claim.

B. The Plan improperly modifies a claim secured by Debtor's principal residence.

A. Debtor's plan is not feasible.

B. Debtor did not propose the plan in good faith.

Debtor filed an Opposition to the Objection on January 5, 2021. Dckt. 23. The opposition is discussed below.

DISCUSSION

Creditor's objections are well-taken.

Failure to Provide for a Secured Claim

Creditor asserts a claim of $62,680.62 in this case, secured by a judgment. Debtor does not list Creditor in Schedule D and instead is listed in Schedule E/F as a nonpriority unsecured claim in the amount of $62,680.62; with the claim is listed in the plan as a Class 7 unsecured claim in the plan. Creditor alleges that the Plan treatment violates 11 U.S.C. § 1325(a)(5) because it misclassifies Creditor's secured claim as an unsecured claim in Class 7 with a proposed distribution of no less than 26%.

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

11 U.S.C. § 1322(b) specifies the provisions that a plan may include at the option of the debtor. With reference to secured claims, the debtor may not modify a home loan but may modify other secured claims (11 U.S.C. § 1322(b)(2)), cure any default on a secured claim—including a home loan—(11 U.S.C. § 1322(b)(3)), and maintain ongoing contract installment payments while curing a pre-petition default (11 U.S.C. § 1322(b)(5)).

If a debtor elects to provide for a secured claim, 11 U.S.C. § 1325(a)(5) gives the debtor three options:

A. Provide a treatment that the debtor and creditor agree to (11 U.S.C. § 1325(a)(5)(A)),

B. Provide for payment in full of the entire claim if the claim is modified or will mature by its terms during the term of the Plan (11 U.S.C. § 1325(a)(5)(B)), or

C. Surrender the collateral for the claim to the creditor (11 U.S.C. § 1325(a)(5)(C)).

Those three possibilities are relevant only if the plan provides for the secured claim, though.

When a plan does not provide for a secured claim, the remedy is not denial of confirmation. Instead, the claimholder may seek termination of the automatic stay so that it may repossess or foreclose upon its collateral. The absence of a plan provision is good evidence that the collateral for the claim is not necessary for the debtor's rehabilitation and that the claim will not be paid. This is cause for relief from the automatic stay. *See* 11 U.S.C. § 362(d)(1).

Notwithstanding the absence of a requirement in 11 U.S.C. § 1322(a) that a plan provide for

a secured claim, the fact that this Plan does not provide for respondent Creditor's secured claim raises doubts about the Plan's feasibility. *See* 11 U.S.C. § 1325(a)(6). That is reason to sustain the Objection.

In his Opposition Debtor first asserts that Creditor does not hold a secured claim because the abstract judgment fails to comply with California law does not include the name and last known address of the judgment debtor and the address at which the summons was either personally served or mailed to the judgment debtor or the judgment debtor's attorney of record [C.C.P. § 674(a)(3)], and further the [correct] case number of the action [C.C.P. § 674(a)(1)]. [Fn.1.]

FN. 1. While citing to several Code sections, Debtor does not quote them, provide any statutory language, any case law, or secondary treatises in support of this assertion of California law. Such authorities and analysis may be provided in the Objection to Claim filed by the Debtor for this claim.

Additionally, the parties need to consider whether the objection to claim is actually a request to determine the extent, validity, priority, or amount of an asserted in interest in the property for which an adversary proceeding would be required as provided in Federal Rule of Bankruptcy Procedure 7001(2), 3007(b) – unless consented to by all parties to be adjudicated in a non-adversary proceeding objection to claim.

A review of Creditor's Proof of Claim 1-1 shows that the Abstract of Judgment is missing page 2. It may be that the information not included according to Debtor is stated in that page. The court is confused as to Debtor's assertion that the correct case number is not stated in the abstract of judgment. The Abstract of Judgment states that the case number is CU18-083268. Proof of Claim at 4. According to Creditor, Creditor sued Debtor in Nevada County Superior court in case number CU17-082402 which was consolidated with case number CU18-083268. Declaration, Dckt. 19, ¶ 2.

At the hearing, xxxxxxxx

Modification of an Obligation Secured Only by Principal Residence

Debtor's Plan was not filed in good faith and is an improper modification of a claim secured only by a security interest in real property that is Debtor's principal residence. Creditor has filed a Proof of Claim indicating a secured claim in the amount of $62,680.62, secured by an abstract of judgment document # 20200024316 against the property commonly known as 10343 Lime Klin Road, Grass Valley, California. Debtor's Schedules indicate that this is Debtor's primary residence. This modification violates 11 U.S.C. § 1322(b)(2), which prohibits the modification of an obligation secured only by Debtor's residence.

Feasibility

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Here, Debtor's proposed plan payment of $350 per month is not sufficient to pay Creditor's secured Claim. The total plan payments to the secured creditor must equal the "allowed" amount of the secured creditor's claim. Creditor argues that Debtor would have to pay no less than $1,331.78 per month for 60 months just to satisfy Creditor's secured Claim at the statutory interest rate

of 10% per annum, not to mention trustee fees and payments to Debtor's other unsecured creditors. Creditor further notes that Debtor's monthly net income, as specified on Schedules I and J, is just $351.16 per month. Thus, the plan is not feasible.

Good-Faith Filing

Creditor alleges that the Plan was not filed in good faith. *See* 11 U.S.C. § 1325(a)(7). Good faith depends on the totality of the circumstances. *In re Warren*, 89 B.R. 87 (9th Cir. BAP 1988). Thus, the Plan may not be confirmed. Factors to be considered in determining good faith include, but are not limited to:

> 1) The amount of the proposed payments and the amounts of the debtor's surplus;
>
> **2) The debtor's employment history, ability to earn, and likelihood of future increases in income;**
>
> 3) The probable or expected duration of the plan;
>
> **4) The accuracy of the plan's statements of the debts, expenses and percentage of repayment of unsecured debt, and whether any inaccuracies are an attempt to mislead the court;**
>
> 5) The extent of preferential treatment between classes of creditors;
>
> 6) The extent to which secured claims are modified;
>
> 7) The type of debt sought to be discharged, and whether any such debt is nondischargeable in Chapter 7;
>
> 8) The existence of special circumstances such as inordinate medical expenses;
>
> **9) The frequency with which the debtor has sought relief under the Bankruptcy code;**
>
> **10) The motivation and sincerity of the debtor in seeking Chapter 13 relief;** and
>
> 11) The burden which the plan's administration would place upon the trustee.

In re Warren, 89 B.R. 87, 93 (B.A.P. 9th Cir. 1988) (quoting *In re Brock*, 47 B.R. 167, 169 (Bankr. S.D. Cal. 1985) (emphasis added).

Here, Creditor alleges the plan was not filed in good faith on the basis that Debtor intentionally misclassified Creditor's secured claim as an unsecured claim and is attempting to inappropriately modify the value of the secured claim through the Chapter 13 plan. Creditor further asserts that the plan was not filed in good faith because Debtor's net monthly income is too low to meet the monthly payment required to cover Creditor's claim and Debtor is not entitled to the claimed $100,000 exemption pursuant C.C.P. § 704.730(a)(2).

In his Opposition Debtor contends that he has lawfully claimed the exemption because Debtor provides necessary and critical basic needs of living support care to his mother, and it is Debtor's position that this is a valid basis to claim a $100,000 exemption pursuant to C.C.P. § 704.730(a)(2). Additionally, Debtor contends that he need not be married or claim dependents to qualify for this exemption.

Debtor requests the court continue the hearing on this motion to February 23, 2021 at 2:00 p.m., the same date and time as the hearing for Debtor's Objection to Creditor's Proof of Claim, so as to allow for further filing of evidence and briefs for the instant objection at the court's discretion.

At the hearing, xxxxxxxx

~~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 Lauren C. Hayes ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is **xxxxxxx**

7. **20-25072-E-13 RJM-2** **RICHARD MYRE** **Judson Henry** **OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS** **12-16-20 [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 Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on December 16, 2020. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

The Objection to Claimed Exemptions 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 Objection to Claimed Exemptions is xxxxx.

Lauren C. Hayes ("Creditor") objects to Richard Eugene Myre's ("Debtor") claimed exemptions under California law because Debtor is not married and does not claim any dependents reside with the Debtor in his residence. The California "homestead" exemption pursuant to California Code of Civil Procedure ("C.C.P.") § 704.730(a)(2) allows a Debtor to claim an exemption of $100,000 where "the judgment debtor or spouse of the judgment debtor who resides in the homestead is at the time of the attempted sale of the homestead a member of a family unit, and there is at least one member of the family unit who owns no interest in the homestead or whose only interest in the homestead is a community property interest with the judgment debtor."

Debtor filed a Response on January 5, 2020. Dckt. 26. Debtor argues that he is not required to be married or have dependents in order to claim the exemption under C.C.P. § 704.730(a)(2). The response is discussed below.

DISCUSSION

A claimed exemption is presumptively valid. *In re Carter,* 182 F.3d 1027, 1029 at fn.3 (9th Cir.1999); *See also* 11 U.S.C. § 522(l). Once an exemption has been claimed, "the objecting party has the burden of proving that the exemptions are not properly claimed." FED. R. BANKR. P. RULE 4003(c); *In re Davis*, 323 B.R. 732, 736 (9th Cir. B.A.P. 2005). If the objecting party produces evidence to rebut the presumptively valid exemption, the burden of production then shifts to the debtor to produce unequivocal evidence to demonstrate the exemption is proper. *In re Elliott*, 523 B.R. 188, 192 (9th Cir. B.A.P. 2014). The burden of persuasion, however, always remains with the objecting party. *Id*.

On Schedule C Debtor claims an exemption in the amount of $100,000 pursuant to California Code of Civil Procedure ("C.C.P.") § 704.730(a)(2).

Debtor alleges that he provides necessary and critical basic needs of living support care to his mother. Response, Dckt. 26. Thus, it is his position that even though he is not married, for purposes of C.C.P. § 704.730(a)(2), the "family unit" here is Debtor's mother, who he cares for, which is included within the definition and scope of C.C.P. § 704.710(b)(2)(C) for purposes of the C.C.P. § 704.730(a)(2) $100,000 exemption. *Id.*, at 2:1-3. Debtor points the court to *In re Billings* for this proposition, which found that ""Family unit" is defined in § 704.710(b)(2)(D) as the debtor and "[a]n unmarried relative described in this paragraph who has attained the age of majority and is unable to take care of or support himself or herself."" *In re Billings*, 262 B.R. 88, 88 (Bankr. N.D. Cal. 2001). *Id.*, at 2:3-7.

Debtor further contends that regarding dependents, the language of C.C.P. § 704.710(b)(2) itself includes the language "cares for," not "dependent." *Id.*, at 2:7-8. Again Debtor points to the analysis in *In re Billings*, arguing that the language in the statute refers to facts that demonstrate an actual dependency and does not require legal dependency status. *Id.*, at 2:8-10.

Debtor requests the court continue the hearing on this objection to February 23, 2021 at 2:00 p.m., the same date and time as the hearing for Debtor's Objection to Creditor's Proof of Claim, so as to allow for further filing of evidence related to providing necessary and critical basic needs of living support to his mother, and supplemental briefs for the instant objection at the court's discretion.

At the hearing, xxxxxxxx

~~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 Claimed Exemptions filed by Lauren C. Hayes ("Creditor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~**IT IS ORDERED** that Objection is overruled / sustained, and the claimed exemptions for $100,000 under California Code of Civil Procedure §704.730(a)(2) are disallowed in their entirety.~~

8. **20-24484-E-13 DPC-1** **ARTURO COUPE**
Michael Hays

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK
11-10-20 [22]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on November 10, 2020. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is xxxxx.

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

A. Debtor failed to provide proof of social security number and identification at the Meeting of Creditors.

B. Debtor has failed to file all tax returns required.

C. Debtor failed to provide copy of the federal income tax return for the most recent tax year.

On November 18, 2020, Trustee filed a Status Report informing the court that Debtor appeared at the continue meeting of creditors held on November 12, 2020 and provided Trustee with identification and social security. Dckt. 32. Additionally, the meeting was continued to January 21, 2020 for the Debtor to file the tax returns required and provide Trustee with copies and proof that they

have been filed. *Id.*

DISCUSSION

Failure to File Tax Returns

Debtor admitted at the Meeting of Creditors that the federal income tax return for the 2015, 2018, and 2019 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).

The Parties agreed to set the final hearing on the Motion.

January 12, 2021 Hearing

As of the court's January 8, 2021 review of the docket in preparing this pre-hearing disposition, no further updates regarding the tax returns has been provided.

At the hearing, xxxxxxxx

9. 17-23396-E-13 ANTHONY/JERI AMENDOLA MOTION TO MODIFY PLAN
LBG-201 Lucas Garcia 11-16-20 [95]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 16, 2020. By the court's calculation, 57 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is denied.

The debtor, Anthony Francis Amendola and Jeri Lee Amendola ("Debtor") seek confirmation of the Modified Plan after Debtor had to change job which affected their income and a home repair that exceeded their ability to pay. Declaration, Dckt. 98. The Modified Plan provides payments of $2,950.00 for 19 months, and a zero (0) percent dividend to unsecured claims totaling $46,733.91. Modified Plan, Dckt. 97. 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 December 22, 2020. Dckt. 103. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor is delinquent in plan payments.

B. Debtor's plan is overextended.

C. Trustee's records reflect there are no post-petition mortgage arrears.

D. Debtor have failed to file Supplemental Schedules I and J in support of their current income and expenses.

DISCUSSION

Delinquency

The Chapter 13 Trustee asserts that Debtor is $3,150.00 delinquent in plan payments, which represents multiple months of the $2,950.00 proposed plan payment. Before the hearing, another plan payment will be due. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Failure to Complete Plan Within Allotted Time

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Chapter 13 Trustee, the Plan will complete in 66 months due to Debtor proposing to pay a total of $53,100.00 over the remaining 18 months of the Plan but $53,662.80 is required in order to pay creditors and trustee's fees. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

Feasibility

Post-Petition Arrearage

Debtor proposes to pay post petition arrears at a rate of $200.00 per month until paid in full. Trustee notes that Debtor fail to provide the amount of the arrears or what months the post petition arrears pertain to. According to Trustee, the Trustee's records reflect Debtor's mortgage payments are current to date.

Supplemental Schedules I and J

Trustee argues that Debtor must file Supplemental Schedules I and J where it has been over two years since Debtor filed Supplemental schedules and Debtor now indicates in their declaration that there has been a job change and an unexpected household repair expense. The original schedules reflected several work related payments that may no longer be necessary.

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

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

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the

debtor, Anthony Francis Amendola and Jeri Lee Amendola ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

10. 20-24700-E-13 KPW-1 — WILLIAM REDDIN — Timothy Hamilton — CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAMES D. PRICE AND SHAREE E. PRICE — 11-25-20 [47]

10 thru 11

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on November 30, 2020. By the court's calculation, 15 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.

The Objection to Confirmation of Plan is xxxxx.

James D. Price and Sharee E. Price ("Creditor") holding a secured claim oppose confirmation of the Plan on the basis that:

A. Debtor fails to provide disposable income.

B. Debtor's plan discriminates against creditors.

C. Debtor's plan should provide for payments for 60 months.

D. Debtor is not prosecuting this bankruptcy case in good faith.

December 2, 2020 Joint Stipulation

On December 12, 202, Debtor, Creditor, and Trustee filed a joint stipulation to continue the hearing on this Objection to January 12, 2021 due to scheduling conflicts of Debtor's counsel. Dckt. 54. On December 5, 2020, the court issued an Order to continue the hearing to January 12, 2021. Dckt. 55.

DISCUSSION

Failure to Provide Disposable Income

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

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

Debtor proposes to pay $500 per month, which is far less than his net disposable income. Moreover, the Plan proposes to pay only a single creditor, Croswhite. No explanation is provided for this discrimination. Thus, the court may not approve the Plan.

Plan Term is Fewer Than 60 months

The Plan violates 11 U.S.C. § 1325(b)(4)(B) because the Plan will complete in less than the permitted sixty months where Debtor has more than the median income. According to Creditor, Debtor proposes a plan for 36 months but has failed to disclose in his schedules Debtor's social security income. Debtor has proposed a plan term of 36 months, but Debtor has failed to propose a plan which includes all of his creditors.

Good-Faith Filing

Trustee alleges that the Plan was not filed in good faith. *See* 11 U.S.C. § 1325(a)(3). Good faith depends on the totality of the circumstances. *In re Warren*, 89 B.R. 87 (9th Cir. BAP 1988). Thus, the Plan may not be confirmed. Factors to be considered in determining good faith include, but are not limited to:

> 1) The amount of the proposed payments and the amounts of the debtor's surplus;
>
> **2) The debtor's employment history, ability to earn, and likelihood of future increases in income;**
>
> 3) The probable or expected duration of the plan;
>
> **4) The accuracy of the plan's statements of the debts, expenses and percentage of repayment of unsecured debt, and whether any inaccuracies are an attempt to mislead the court;**
>
> 5) The extent of preferential treatment between classes of creditors;
>
> 6) The extent to which secured claims are modified;

7) The type of debt sought to be discharged, and whether any such debt is nondischargeable in Chapter 7;

8) The existence of special circumstances such as inordinate medical expenses;

9) The frequency with which the debtor has sought relief under the Bankruptcy code;

10) The motivation and sincerity of the debtor in seeking Chapter 13 relief; and

11) The burden which the plan's administration would place upon the trustee.

In re Warren, 89 B.R. 87, 93 (B.A.P. 9th Cir. 1988) (quoting *In re Brock*, 47 B.R. 167, 169 (Bankr. S.D. Cal. 1985) (emphasis added).

Creditor alleges that the inconsistencies between Debtor's bankruptcy filings and examination testimony demonstrate lack of good faith. Lack of good faith also exists where Debtor's proposed plan purports to pay Croswhite but no other creditors. Creditor argues that creditor Croswhite has an under-secured claim as the proof of claim claims $92,000 are owed and secured by Debtor's business assets, which in total are valued at less than $24,000.

Debtor's Opposition

Debtor filed a Response on December 18, 2020. Dckt. 59. Debtor asserts that it is not bad faith for Debtor to affirm the contract between Debtor and creditor Croswhite. Debtor asserts that there is now a stipulation between Debtor and Croswhite (with the Trustee's approval) affirming the executory contract as a cash collateral agreement to provide the Trustee with the proceeds from the business under the Chapter 13 plan. Debtor further argues that Creditor's claim is unsecured as it is based on a judgment obtained by Creditor through default. Debtor states that an agreement between Debtor and Creditor should be arranged in order to address Creditor's claim.

Debtor asserts that Debtor did not attempt to hide financial information but that Debtor's accountant in preparing the schedules discounted the amount paid to Croswhite anticipating approval by the Trustee. Debtor adds Debtor has no reason to hide income since it does not affect whether the plan is approved so long as Debtor could pay for the plan. Debtor then argues that now that executory contract has been affirmed and the stipulation approved by the Trustee, Debtor's schedules are accurate and consistent with Debtor's examination responses.

Debtor requests that the hearing on the instant objection be continued until after the adversary proceeding filed by Creditor against Debtor is resolved.

Creditor's Response

Creditor filed a Sur-Reply on December 30, 2020. Dckt. 61. Creditor states that Debtor's Response fails to support the assertions made regarding Croswhite and that such assertions contradict Debtor's schedules. Creditor restates that Debtor's schedules do not list any secured creditors or mention accounts receivable.

Creditor contends that Debtor's assertions regarding the assumption of an executory contract are false as a matter of law because Debtor has not obtained court approval of any assumption. Creditor adds that Croswhite alleging a secured claim does not make the contract an executory contract and that Debtor seems to be conflating holding a security interest with ownership. Creditor also argues that the accounts receivable are not property of creditor but property of the estate.

Stipulation with Croswhite

On January 4, 2021, a Motion to Approve a Stipulation for Use of Cash Collateral and to Assume Executory Contract pursuant to 11 U.S.C. § 363, and § 549, and § 365, and Local Bankruptcy Rule 4001-1, and Local Bankruptcy Rule 9014-1, was filed by counsel for Croswhite. Dckt. 63. The Motion to Approve Use of Cash Collateral and the Motion to Assume Executory Contract is set for hearing on February 2, 2021.

The court first notes Federal Rule of Civil Procedure 18 allowing for the combining of multiple claims into one action that is incorporated into Federal Rule of Bankruptcy Procedure 7018 is not incorporated into law and motion contested matter practice by Federal Rule of Bankruptcy Procedure 9014. Movant Croswhite unilaterally made the Rule 18 provisions applicable for the relief that Movant Croswhite seeks to obtain from the court. Federal Rules of Bankruptcy Procedure 4001 (stipulation to use cash collateral) and 6006 do not provide for the combining of the two different reliefs into one motion. Though the court may make Rule 7018 and Rule 18 applicable in contested matters as provided in Federal Rule of Bankruptcy Procedure 9014(c), such was not requested by Movant Croswhite.

The grounds stated with particularity seeking an order approving the Stipulation to Use Cash Collateral and an Order for Assumption of the executory contract in the Motion (Dckt. 63) are:

A. Debtor will assume an executory agreement (not identified the nature of the executory agreement);

B. Debtor will pay Movant Croswhite $2,945.10 a month;

C. Debtor will retain "cash collateral proceeds" to pay his reasonable and necessary living and business expenses; and

D. Debtor will pay some unidentified disposable income from Debtor's business, Precision Pump & Water Works, to the Chapter 13 Trustee pursuant to a proposed plan.

No other grounds are stated identifying the multi-relief requested or the grounds upon which such multi-relief is based.

In the Points and Authorities filed by Movant Croswhite, some additional information (some might say "grounds") appear. Dckt. 65. These include:

i. Movant Croswhite sold Precision Pump to Debtor on June 30, 2016, pursuant to an Asset Purchase Agreement.

ii. Movant Croswhite was given a promissory note for a portion of the

purchase price, which is secured by the Debtor's accounts receivables and other assets subject to the purchase agreement.

iii. The Stipulation applies only to the pre-petition collateral to which Movant Croswhite can assert a lien.

iv. The "executory contract" is asserted to be Debtor's obligations to make payments on the promissory note. Additionally, as part of the sale Movant Croswhite has some non-competition obligation for five years from the execution of the purchase agreement, which noncompetition agreement expires on June 30, 2021 (approximately five months from the hearing on the Croswhite Motion).

The secured claim filed by Croswhite is for $92,091.55, and is asserted to be secured in its entirety. The assets securing the claim are generally described as "Precision Pump business assets." Proof of Claim 2-1, ¶ 9.

On Schedule A/B Debtor states under penalty of perjury that the business assets, consisting of tools, spare pump, and customer list as of the filing of this case had a combined value $2,700. Dckt. 12 at 9. This is approximately 2.9% of the $92,091.55 claim of Croswhite.

Debtor also lists three bank accounts on Schedule A/B, with balances totaling $9,250. *Id*. at 5. It is not clear what portion of this may be claimed as cash collateral by Croswhite.

On Schedule D Debtor states under penalty of perjury that he has no creditors who have secured claims. Dckt. 14.

Croswhite is listed as a creditor having a general unsecured claim of $103,481 on Schedule E/F. Dckt. 15.

On Schedule G Debtor lists having an "executory contract" for the purchase of business with creditor Croswhite. Dckt. 16.

On Schedule I Debtor states under penalty of perjury having "wage" income of $2,778 from being self employed. Dckt. 18.

On Schedule J Debtor states under penalty of perjury having reasonable and necessary expenses of $2,580 a month, leaving only $196 a month in net income. Dckt. 19. Debtor shows no expenses for self-employment taxes or income taxes. *Id.*, at 2.

While having only $2,778 in monthly wage income, on the Statement of Financial Affairs Debtor states under perjury of having gross business income of $182,269 in 2020 year to date, $242,923 in 2019, and $267,567 in 2018. Dckt. 22, Question 4.

On November 6, 2020, Debtor filed an Amended Schedule J, in which he states having $2,663 of net monthly income. Dckt. 37. This is based on Debtor stating that the income from line 12 on Schedule I is $5,243 a month. No amended Schedule I has been filed showing such increased monthly income.

DECISION

As discussed above, it appears that Debtor is pursuing a cash collateral Stipulation that is grossly inconsistent with the value of the collateral securing the Creditor Croswhite's claim. Additionally, Debtor seeks to reaffirm an executory contract with only five months on it at the cost of $2,945 a month. The proposed Stipulation is to be in effect only until March 31, 2021 - two months after the hearing date. The Stipulation is given retroactive effect, requiring the Debtor to have made monthly payments of $2,945 to Croswhite in November 2020, December 2020, January 2021, and February 2021 (the payment required to be made by the first of the month, which is prior to the February 2021 hearing. Thus, the Stipulation seeks to require $11,780 in "adequate protection payments" which had not been authorized by the court. (This $11,780 appears to exceed the value of Croswhite's collateral, at least as stated under penalty of perjury by Debtor.)

At the hearing, xxxxxxxx

11. 20-24700-E-13 DPC-1 — WILLIAM REDDIN, Timothy Hamilton — CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK, 11-25-20 [43]

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and creditors, on November 25, 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 Objection to Confirmation of Plan is xxxxx.

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

A. Debtor failed to provide his Social Security number.

B. Debtor failed to file documents related to business.

C. Debtor failed to file business documents required by Schedule I.

D. Debtor failed to provide accurate amount of disposable income.

E. Debtor inaccurately completed a Schedule I field.

DISCUSSION

Trustee's objections are well-taken.

Failure to Provide Social Security Number

Every individual debtor shall bring to the meeting of creditors under 11 U.S.C. § 341 evidence of social security number(s), or a written statement that such documentation does not exists. FED. R. BANK. P. 4002(b)(1)(B). Without the required documents, the Trustee is unable to properly examine the Debtor at the meeting of creditors.

Failure to File Documents Related to Business

Debtor has failed to timely provide Trustee with business documents including:

A. Questionnaire,
B. Two years of tax returns,
C. Six months of profit and loss statements,
D. Six months of bank account statements, and
E. Proof of license and insurance or written statement that no such documentation exists.

11 U.S.C. §§ 521(e)(2)(A)(i), 704(a)(3), 1106(a)(3), 1302(b)(1), 1302©; FED. R. BANKR. P. 4002(b)(2) & (3). Debtor is required to submit those documents and cooperate with Trustee. 11 U.S.C. § 521(a)(3). Without Debtor submitting all required documents, the court and Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325.

Failure to File Business Documents Required by Schedule I

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

Failure to Provide Disposable Income

The Plan may not comply with 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's Calculation of Disposable Income (Form 122C-1) includes an improper expense at line 5 for ordinary and necessary business expenses of $20,006.00. Trustee points the court to *Drummond v. Wiegand (In re Wiegand),* 386 B.R. 238 (B.A.P. 9th Cir. 2008), where the Bankruptcy Appellate Panel for the Ninth Circuit concluded that a chapter 13 Debtor may not deduct business expenses from gross receipts to calculate current monthly income.

Trustee further notes that based on the gross receipts of $22,784.00, Debtor's annualized current monthly income is $274,488.00, placing Debtor over the applicable median family income of $60,360.00.

Trustee requests that Debtor file new and accurate Forms 122C-1 and C-2 so that it may be determined if the plan complies with 11 U.S.C. Section 1325(b)(1)(B).

Inaccurate Schedule I filed

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. According to Trustee, at the Meeting of the Creditors, Debtor testified that he has a monthly income of $5,243.00 instead of $2,778.00 as listed on Schedule I. Debtor amended his Schedule J to reflect the income of $5,243.00 but has failed to file an amended Schedule I to list $5,243.00 monthly income instead of $2,778.00. Trustee requested that Schedule I be amended to update the income information. The Amended Schedule has not yet been filed. The Plan does not comply with 11 U.S.C. § 1325(a)(1).

December 15, 2020 Hearing

The Parties stipulated to continue the hearing a month, to January 12, 2021. The reason for the continuance was due to scheduling conflicts for Debtor's counsel.

January 12, 2021 Hearing

As of the court January 8, 2021 review of the docket for the preparation of this pre-hearing disposition, no other documents or pleadings have been filed.

At the hearing, xxxxxxxx

12. **20-23804-E-13 DBJ-1** **MARVIN/JEANINE BURGESS** **Douglas Jacobs** **MOTION TO CONFIRM PLAN** **11-5-20 [41]**

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 November 5, 2020. By the court's calculation, 68 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 xxxxx.

The debtors, Marvin John Burgess and Jeanine Marie Burgess ("Debtor"), seek confirmation of the Amended Plan. The Amended Plan provides for monthly payments of $2,495 from November 2020 through the remainder of the plan and a 100 percent dividend to unsecured claims totaling $1,450.00. Amended Plan, Dckt. 44. 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 December 23, 2020. Dckt. 50. Trustee opposes confirmation of the Plan on the basis that the Plan exceeds the amount allowed under the Bankruptcy Code.

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). According to Trustee, the Plan will complete in 72 months because the plan estimates

unsecured claims of $1,450 to be paid 100%, where filed unsecured claims total $33,422.41. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

The Trustee notes that, according to Amended Schedule J, Debtor's net monthly expense is $4,555.00 and Debtor have the ability to increase the Plan payments, in or for the Plan to complete in 60 months.

Additionally, according to Trustee, Debtor does not specify the source of the lump sum payment in the amount of $120,000 identified in the plan as to be paid sometime during the first 12 months of the plan. Trustee does note that the Motion refers to an open escrow.

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

Debtor filed a Response on January 6, 2020 addressing Trustee's concerns. Dckt. 56. Debtor first suggests that the dividend paid to unsecured claims be reduced to no less than 10% and clarifies that the $120,000 lump sum comes from the sale of most of the tool of Napa Auto Parts, which after payment of $4,000 to the escrow company to complete that transaction, will leave $120,000 to pay to the bank, who has a secured purchase money lien on the tools. Debtor also notes that a motion for court approval to complete the transaction will be filed.

Debtor addressing Trustee's concerns, the Amended Plan complies with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Marvin John Burgess and Jeanine Marie Burgess ("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 November 5, 2020, and as amended to pay 10% dividend to unsecured claims, 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.

13. 20-23106-E-13 PGM-1 KELVIN PICKETT Peter Macaluso MOTION TO CONFIRM PLAN 11-11-20 [38]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 12, 2020. By the court's calculation, 61 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is xxxxx.

The debtor, Kelvin Quentin Pickett ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for plan payments of $2,170.00 per month starting November 25, 2020 for 56 months, and a zero (0) percent dividend to unsecured claims totaling $14,357.00. Amended Plan, Dckt. 42. 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 January 7, 2021. Dckt. 46. Trustee notes that the Opposition was not timely filed due to a system failure to download the documents on November 11, 2020. Trustee urges the court to consider this response on the basis that a Motion to Dismiss remains pending based on delinquency and Debtor has indicated that they will be making the November or December 2020 payments.

Trustee opposes confirmation of the Plan on the basis that Debtor is delinquent in plan payments.

DISCUSSION

Delinquency

The Chapter 13 Trustee asserts that Debtor is $2,190.00 delinquent in plan payments, which represents less than one month of the $2,170.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

The 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, Kelvin Quentin Pickett ("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. **19-27823-E-13 MET-4** **14 thru 15**

GURBAX/USHA SUNAK
Mary Ellen Terranella

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH LEONEL CORTEZ, JR. ET AL
11-27-20 [84]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 27, 2020. By the court's calculation, 46 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

Gurbax Singh Sunak and Usha Rani Sunak, Chapter 13 Debtor, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Leonel Cortez, Jr., George L. Reyes, Miguel Reyes, Daniel Cortez, and Araceli Cortez ("Settlor"). The claims and disputes to be resolved by the proposed settlement are Settlor's objection to confirmation of Debtor's plan which was sustained by court on February 11, 2020; specifically the compromise provides for Settlor's secured claim as shown on Proof of Claim 11.

Movant and Settlor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 87):

A. Debtor to pay $180,000 with a lump sum in the amount of $60,000 to be paid within 30 days of the effective date, which was October 1, 2020.

B. Creditor's claim in the amount of $321,827.00 is deemed satisfied by the $180,000 payment.

C. After payment of the lump sum, the remaining $120,000 of the settlement will be paid directly by Debtor as a Class 4 claim, in monthly increments of $2,5000 commencing January 15, 2021 and continuing each month thereafter for 48 months.

D. Upon completion of the settlement payments, Creditor is to provide Debtor with a Satisfaction of Judgment as to the Harbor Drive property.

E. Each party shall bear their own attorney's fees and costs associated with the agreement and its approval.

DISCUSSION

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

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

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

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

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

Movant argues that due to the uncertain around the valuations of the Harbor Drive property, the parties agreed to compromise. The commercial property used to be a gas station with underground tanks still there. The environmental reports showed soil and water contamination. The parties were provided with two appraisals, one taking into account costs of environmental clean up and another if no environmental clean up was required. Although the higher valuation showed equity it was not the full amount of Creditor's claim.

Movant further argues that the Settlement Agreement is the best solution as further litigation of the commercial property or a forced sale may result in additional fees and costs which Debtor has no ability to pay. Further, the Agreement allows Debtor to retain the commercial property which produces the majority of their income; and, lastly, allows the Trustee to continue to administer the estate.

Supplemental Evidence

On December 27, 2020, Komal Sunak, a daughter of Debtor, filed her declaration. She testifies to providing $50,000 from her own monies to fund the $60,000 settlement payment. Dckt. 98. She testifies that this is money she has saved over the years for emergencies.

Her testimony does not include where she had saved these monies, copies of bank statements (assuming they were in a bank account or other location that could be documented), or the transfer of the monies from Komal Sunak's account to counsel for the Debtor.

A second Declaration was filed on December 27, 2020, by Simran Sunak, the younger daughter of Debtor. Dckt. 99. In it Simran Sunak testifies that she has saved **all** the cash gifts she has received from family and friends for birthdays and holidays since she was 18 years old. Simran Sunak does not testify as to her age when she states that she transferred $10,000 of such saved gifts to counsel for Debtor. When the bankruptcy case was filed, Debtor listed only one daughter who is a dependent, identifying her age as 22.

Simran Sunak testifies that she has bank records to document these monies, and has provided them to the Trustee. However, Simran Sunak has not provided them to the court.

The court was very clear to Debtor and Debtor's counsel that they would have to clearly document for the court the source of this $60,000 that their daughters had to gift them. The evidence presented is that the daughters never spent any of the gift monies they were given over the years, but squirreled it away. Other than that short statement, no documentation of such 60,000 acorns of money being squirreled away by the two daughters is provided to the court.

Source of $60,000

At the hearing Counsel for Debtor reviewed with the court the evidence documenting the source of the $60,000 that the two daughters are purporting to gift to Debtor, their parents. Counsel first directed the court to **xxxxxxx**

Consideration of Additional Offers

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

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise ~~is in the best interest of the creditors and the Estate because it allows Debtor to retain property which produces the income to fun the chapter 13 plan. The Motion is xxxxxxx .~~

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

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

The Motion to Approve Compromise filed by Gurbax Singh Sunak and Usha Rani Sunak, the Chapter 13 Debtor, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Approval of Compromise between Movant and Leonel Cortez, Jr., George L. Reyes, Miguel Reyes, Daniel Cortez, and Araceli Cortez ("Settlor") is **xxxxxxx**

15. **19-27823-E-13 MET-3** **GURBAX/USHA SUNAK** **Mary Ellen Terranella** **CONTINUED MOTION TO CONFIRM PLAN** **10-24-20 [67]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 24, 2020. By the court's calculation, 45 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Plan is xxxxx.

The debtors, Gurbax Singh Sunak and Usha Rani Sunak ("Debtor") seek confirmation of the Chapter 13 Plan. The Plan provides for monthly payments of $4,675 for 12 months, followed by $4,940.00 for 48 months, and a zero (0) percent dividend to unsecured claims totaling $211,723.00. Plan, Dckt. 70. 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 November 24, 2020. Dckt. 81. Trustee opposes confirmation of the Plan on the basis that:

A. There is not sufficient evidence and information to properly assess the non-standard provisions dealing with the treatment of "secured creditor Leonel Cortez, et al."

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 the plan calls for "secured creditor Leonel Cortez, et al." to be paid directly by Debtor a lump sum of $60,000 followed by $2,500 monthly payments for the last 48 months of the plan. Trustee. At this juncture Trustee is concerned by the source of the $60,000 and if it is non-exempt then those funds should be paid to creditors holding unsecured claims.

Moreover, Trustee is unsure as to the accuracy of Debtor's Schedules where the December 2019 Schedules showed a $8,075 income but is now projected at $10,575.00. Trustee requests that Debtor file a detailed business income and expense statement so as to accurately assess whether Debtor can afford to make the proposed plan payments.

Trustee asks the court to continue the motion to allow for supplemental evidence and pleadings.

Pending Motion to Approve Settlement

On November 27, 2020, Debtor filed a Motion to Approve Settlement with Cortez et al. Dckt. 84. Under the Settlement, Cortez et al. reduce the amount of their claim to $180,000.00 from $321,827.00. The Motion states that Debtor has paid $60,000.00 to Cortez et al. prior to November 20, 2020. The source of these funds are stated in the Motion to be from Debtor's daughters. Motion, Dckt. 84 at 2. [Fn.1.]

FN. 1. It is not clear whether one of the two daughters includes the adult daughter who is a dependent of the Debtor. Schedule J and Supplemental Schedule J; Dckts. 1, 72.

The Motion states that Cortez et al. recorded a judgment lien against the Pebble Beach Drive Property. The court has already issued a final order avoiding Cortez et al.'s judicial lien on the Pebble Beach Drive Property. Order, Dckt. 76.

The Motion further states that a judgment lien was also recorded against the Debtor's Harbor Drive Property. No order avoiding that judgment lien has been issued. In the Declaration filed in support of the Motion to Approve Settlement, Debtor testifies that the value of the Harbor Drive Property may be more (in an unstated amount) than the senior encumbrances, or the value may be less

than the senior encumbrances. No copy of the appraisers valuations are provided.

The court does have Debtor's statement under penalty of perjury on Schedule A/B that the Harbor Drive Property has a value of $375,000. Dckt. 1 at 13. On Schedule D Debtor states that Northeast Bank has a claim of $347,930.00 (this is consistent with Proof of Claim No. 15-1 filed by Northeast Bank), and $19,994.00 in property taxes secured by the Property. Thus, based on Debtor's information, it appears that Cortez et al.'s secured claim has a value of $0.00.

It appears that Debtor, Cortez et al., and their respective counsel have chosen to "approve" and implement their settlement without the need for any court approval. They have chosen to move substantial monies around, purportedly from Debtor's daughters, outside the transparency of the federal judicial process. Also, they have chosen to act without any federal court authorization.

It further appears that Debtor and Cortez et al., and their respective attorneys, are seeking retroactive approval/cramming down on the court their pre-approved, already implemented settlement, which works to divert monies to Cortez et al. on their unsecured claim and discriminate improperly against other creditors with unsecured claims. While Debtor may wish to prefer Cortez et al. and favor Cortez et al. over the other creditors with unsecured claims – a good faith, *bona fide*, based on the Bankruptcy Code, basis for such discrimination is not identified for the court.

Additionally, no testimony is provided by Debtor's daughters as to the source of the $60,000 gift to Debtor.

At the hearing, counsel for Cortez et al. reported that the $60,000.00 is being held in his client trust account pending court approval of the Settlement. Therefore, it appears that this may not be a retroactive approval request.

Funding of Plan

Looking at Supplemental Schedule J, Debtor appears to have at least $7,400 a month to fund a plan. Dckt. 72. Over sixty months, that totals $444,000. After deducting 10% for Chapter 13 Trustee Fees and $5,000 for Debtor's counsel's fees, that leaves $395,000 for payment of creditor claims.

Using the proposed Plan, the waterfall of payments for claims provided in the Plan would be as follows:

Plan Payments Total For Disbursement on Claims	$395,000
Class 1 Secured Claim - Pebble Beach Drive Property Collateral	($216,440)
Class 2 City Property Tax Claim Pebble Beach Property Collateral	($3,600)
Class 2 County Property Tax Claim Harbor Drive Property Collateral	($57,780)

Class 5 IRS Priority Unsecured Claim Proof of Claim No.	($11,081)
	==========
Plan Funds For General Unsecured Claim Disbursement	$106,099

Thus, it appears that there would be $106,099 available to disbursement to creditors holding general unsecured claims.

In addition to the Cortez et al. claim (for which there appears to be a $0.00 § 506(a) secured claim) in the unsecured amount of $321,827 (duplicate Proofs of Claim Nos. 11-1, 12-1), the other general unsecured claims total $42,213, for a total of $364,040 in aggregate general unsecured claims. With $106,099 to distribute on the general unsecured claims, that would be a 29.2% dividend for creditors holding general unsecured claims.

From such a dividend, Cortez et al. would receive a distribution of $93,651 and the other creditors holding general unsecured claims would receive $12,284, not an insignificant amount for general unsecured claims in a Chapter 13 case.

Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable. Further, no settlement has been approved by the court (though chosen to be independently implemented by Debtor and Cortez et al.), which settlement appears to discriminates against creditors with general unsecured claims and to favor the general unsecured claim of Cortez et al.

Continuance of Hearing

Debtor's counsel requested that this hearing be continued to be heard in conjunction with the Motion to Approve the Settlement. Debtor will be filing supplemental pleadings addressing the issues concerning the settlement, the treatment of Cortez et al.'s claim, and confirmation of this plan.

January 12, 2021 Hearing

Trustee filed a Response on December 29, 2020. Dckt. 102. Trustee notes that Debtors have filed a motion to compromise to be heard on the same date as the instant motion and asserts that if the compromise is not granted, Debtors will not be able to comply with the plan under 11 U.S.C. § 1325(a)(6). *Id.*

At the hearing, xxxxxxxx

16. 19-25324-E-13 PGM-3 — BETHANY SANDERS-JOHNSON — Peter Macaluso — MOTION TO MODIFY PLAN — 11-11-20 [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.

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 November 11, 2020. By the court's calculation, 62 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is xxxxx.

The debtor, Bethany Elaine Sanders-Johnson ("Debtor") seeks confirmation of the Modified Plan to begin remitting payments now that she has obtained full time employment as a COVID nurse for Nightingales list. Declaration, Dckt. 89. The Modified Plan provides for plan payments of $3,150.00 per month commencing November 25, 2020 for 70 months, and a 100 percent dividend to unsecured claims totaling 39,665.22. Modified Plan, Dckt. 90. 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 December 9, 2020. Dckt. 94. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor is delinquent in plan payments.

B. Debtor states an incorrect amount in post-petition arrears.

C. Debtor may not have the ability to make plan payments.

DISCUSSION

Delinquency

The Chapter 13 Trustee asserts that Debtor is $3,150.00 delinquent in plan payments, which represents one month of the $3,150.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Post-Petition Arrearage

Trustee asserts that due to Debtor's failure to make plan payments, Trustee had been unable to make class 1 creditor Freedom Mortgage Corporation installment payments for the months of June, July, August, September and October of 2020 for the first deed. Trustee's accounting shows that the amount due for the unpaid installments is $6,278.65.

Trustee argues that while the modified plan attempts to specify a cure of the post-petition arrearage for the first deed, the Debtor appears to have combined the first arrears amount of $4,522.18 and the second arrears amount of $6,278.65 into one proposed claim and has not specified the months in arrears. According to Trustee, the Debtor has increased the second deed claim to $405.00, which is incorrect because there has not been any delinquency on the second deed since confirmation. Thus, the amount should remain at $324.00.

Ability to Pay and Good Faith

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Trustee asserts that Debtor has failed to file supplemental Schedules I and J to account for her new employment as a nurse, where the original schedules were last filed in August 2019. Trustee further argues that Debtor has not complied with the order confirming to notify the Trustee in writing of any termination, reduction of, or other change in employment. The Debtor has also failed to provide current pay advices.

Moreover, Debtor has failed to make the November 2020 payment and has a history in the case which shows that Debtor is not likely to pay the plan.

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

Debtor filed a Reply requesting the court continue the hearing on this motion so that Debtor and counsel may meet to discuss Trustee's Opposition. Dckt. 97. Debtor explains that as a frontline healthcare employee working with COVID-19 patients and due to the recent holidays, she has been unable to meet with her counsel. *Id.*

At the hearing, xxxxxxxx

~~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, Bethany Elaine Sanders-Johnson ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

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

17. **20-24824-E-13 DPC-1** **GURINDER BAINS** **Douglas Jacobs** **AMENDED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **12-29-20 [18]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on December 29, 2020. By the court's calculation, 14 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 cannot make the plan 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). Trustee argues that Debtor has failed to properly account for self-employed taxes on his income on the basis that the Debtor shows $1,000.00 in expenses, on Schedule J, for taxes on his income of $6,500.00, which would be 15.4%. Trustee argues that this appears too low for a self-employed individual.

Additionally, Trustee asserts that Debtor's stated gross income on his Statement of Financial Affairs is wrong. In reviewing Debtor's tax returns for 2019 and 2018, Trustee found that Debtor had a gross income of $177,314.00 for 2019, where Debtor reported $24,000 in the Statement of Financial Affairs, and a gross income of $215,692 in 2018, where Debtor reported $30,000 in the Statement of Financial Affairs.

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.

18. **20-23738-E-13** **KIMBERLY GORDON** **MOTION TO CONFIRM PLAN**
PGM-3 **Peter Macaluso** **11-19-20 [40]**

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

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

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on November 19, 2020. By the court's calculation, 54 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the 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, Kimberly Marie Gordon ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for plan payments of $350.00 for four (4) months, followed by $740.00 for 56 months starting December 2020, and a 100 percent dividend to unsecured claims totaling $11,338.70. Amended Plan, Dckt. 43. 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 December 29, 2020. Dckt. 47. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor is delinquent in plan payments.

B. Plan exceeds the permitted number of months under the bankruptcy code.

C. Debtor failed to file tax returns.

D. Debtor's plan was not filed in good faith.

E. Debtor fails the liquidation analysis.

Debtor filed a Reply on January 5, 2020. Dckt. 50. The reply is discussed below.

DISCUSSION

Delinquency

Debtor is $740.00 delinquent in plan payments, which represents one month of the $740.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

At the hearing, xxxxxxxx

Plan Exceeds 60 months

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to Trustee, the Plan will complete in 88 months if the Department of Education files a claim as scheduled by the Debtor within the governmental bar date of January 27, 2021. According to Trustee, if the claim is not filed the plan can complete within 60 months.

The Department of Education having filed a proof of claim in Debtor's prior case, it is likely that they will do so again this time.

The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

At the hearing, xxxxxxxx

Failure to File Tax Returns

According to the proof of claim filed by the Internal Revenue Service, it seems that Debtor failed to file the federal income tax return for the 2018 tax year. 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).

Debtor asserts that the tax return was filed but that the Internal Revenue Service, now working from home, has yet to reconcile the actual return filed and the estimated amount included in the presently filed Proof of Claim. Reply, ¶ 1. Debtor also informs the court that Debtor's counsel will continue reaching out to the Internal Revenue Service so that the proof of claim be amended. *Id.*

Good-Faith Filing

Trustee alleges that the Plan was not filed in good faith. *See* 11 U.S.C. § 1325(a)(3). Good faith depends on the totality of the circumstances. *In re Warren*, 89 B.R. 87 (9th Cir. BAP 1988). Thus,

the Plan may not be confirmed. Factors to be considered in determining good faith include, but are not limited to:

> 1) The amount of the proposed payments and the amounts of the debtor's surplus;
>
> **2) The debtor's employment history, ability to earn, and likelihood of future increases in income;**
>
> 3) The probable or expected duration of the plan;
>
> **4) The accuracy of the plan's statements of the debts, expenses and percentage of repayment of unsecured debt, and whether any inaccuracies are an attempt to mislead the court;**
>
> 5) The extent of preferential treatment between classes of creditors;
>
> 6) The extent to which secured claims are modified;
>
> 7) The type of debt sought to be discharged, and whether any such debt is nondischargeable in Chapter 7;
>
> 8) The existence of special circumstances such as inordinate medical expenses;
>
> **9) The frequency with which the debtor has sought relief under the Bankruptcy code;**
>
> **10) The motivation and sincerity of the debtor in seeking Chapter 13 relief;** and
>
> 11) The burden which the plan's administration would place upon the trustee.

In re Warren, 89 B.R. 87, 93 (B.A.P. 9th Cir. 1988) (quoting *In re Brock*, 47 B.R. 167, 169 (Bankr. S.D. Cal. 1985) (emphasis added).

Here, Trustee asserts that Debtor has failed to disclose in her Schedules her actual interest in real property 500 Bremner Way, Sacramento, California. Moreover, Trustee notes that Debtor continues to make "mini mortgage" payments of $166.67 and has now amended her schedules to $0.00 for rent or home ownership expenses where it was originally $500.00. Trustee also notes that Debtor's counsel filed a proof of claim for property taxes prior to the expiration of the governmental bar date and failed to attach documents.

In her Reply, Debtor states that Debtor purchased the home with her father's help, who paid the initial down payment but did not secure the debt with a note. Reply, ¶ 2A. Debtor explains that the term "mini mortgage" is used to identify the $500.00 payment to her father but that she has now stopped this payment and is instead paying $4,166.67 to cover the on-going property taxes. *Id.* Further, Debtor states that she will provide a title report to clarify who has title to the property and will file a claim for OneMain Financial, if such service was in error. *Id.*, ¶ 2B.

Additionally, Trustee asserts that most unsecured claim have not filed, possibly because Debtor's initial plan proposed no less than 0% to unsecured claims. Adding that Debtor does not appear to have served creditors OneMain Financial and the U.S. Department of Education, which had filed claims in Debtor's prior case.

In her Reply, Debtor agrees to include the Federal Judgment Interest rate in the order confirming the plan if allowed by the court. Reply, ¶ 3. Debtor will also correct her payroll deduction to address Trustee's concerns regarding future increased tax deductions. *Id.*, ¶ 4.

Debtor also states that both OneMain Financial and the U.S. Department of Education were served at the addresses provided in the proofs of claim filed in the prior case. *Id.*, ¶ 6.

Debtor Fails Liquidation Analysis

Debtor's plan fails the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). Trustee states that Debtor does not propose interest to unsecured claims in the plan proposed and may fail the liquidation test on the basis that Debtor continues to make "mini mortgage" payments to her father.

In her Response, Debtor requests the court continue the hearing until after January 27, 2021, to ascertain whether the U.S. Department of Education / Fedloan Servicing has filed a claim.

At the hearing, xxxxxxxx

~~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, Kimberly Marie Gordon ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

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

19. 20-22540-E-13 RJ-4 | **RAKESHNI SHARMA** **Richard Jare** | **OBJECTION TO CLAIM OF CHARMAINE FAY MARIA MARK AND MATTHEW STANTON MARK, CLAIM NUMBER 1** **11-17-20 [109]**

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

Local Rule 3007-1 Objection to Claim—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Chapter 13 Trustee, and Office of the United States Trustee on November 17, 2020. By the court's calculation, 56 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Objection to Proof of Claim Number 1-1 of Charmaine Fay Maria Mark and Matthew Stanton Mark, Trustees of the USRE TRUST is xxxxxxx.

Rakeshni Devi Sharma, the Chapter 13 Debtor, ("Objector") requests that the court disallow the claim of Charmaine Fay Maria Mark and Matthew Stanton Mark, Trustees of the 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 attachment to the claim fails to show that the claimant is the beneficiary under the attached Deed of Trust.

DISCUSSION

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting

to a proof of claim has the burden of presenting substantial evidence to overcome the prima facie validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and requires financial information and factual arguments. *In re Austin,* 583 B.R. 480, 483 (B.A.P. 8th Cir. 2018). Notwithstanding the prima facie validity of a proof of claim, the ultimate burden of persuasion is always on the claimant. *In re Holm*, 931 F.2d at p. 623.

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.

This is not Debtor's first attempt at objecting to Creditor's Proof of Claim. The first objection stated that the claim was invalid on the basis that the deed of trust did not designate a legally competent party. Debtor argued that the trust could not be the legal party but the trustee of the trust would be the proper party. Creditor opposed and Debtor's Objection was dismissed without prejudice on the grounds that Debtor-Objector failed to provide any law or other basis to disallow the claim. *See* Civil Minutes, Dckt. 84.

This time Objector argues that the claim fails to show that the claimant is the beneficiary under the deed of trust. Objector cites Rule 3001(d) which requires Evidence of Perfection of Security Interest arguing that it is Creditor's burden to show that it is the beneficiary under the deed of trust and claimant has failed to do so.

The Objection refers to Declaration of Debtor filed as document # 29 where Debtor testifies that she believed that the lender attached the exhibit to the note designating the payee after she signed the note. The court notes that no declaration from Debtor was filed with the instant objection. In turn, the Objection suggests the court infer that the lack of beneficiary suggests that Creditor may be admitting that it will not try to add a designation after Debtor signed.

Objector then questions whether the trustee of Creditor USRE Trust actually created this trust. Adding that the document creating the trust may have been something to administer a retirement plan but tried to change the wording to create "this contraption." Objector refers to Creditor's previous declaration in which Creditor states that the trust if for Charmaine Mark and her son to hold retirement funds of themselves as sole employees of USRE Corporation but then alleges, without evidence, that Mark and her son are not the sole employees and that the trust may be a DBA to conceal the identities of the parties entitled to enforce the note.

The Declaration 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 found in his research of the internet, namely that he was unable to find internet presence of Creditor except for the 2017 corporate license for United States Real Estate Corporation. Dckt. 59.

For Exhibits, Objector includes a blank State of California- Secretary of State Statement of Information and the 2005 Articles of Incorporation of United States Real Estate Corporation. Dckt. 111. Objector also filed a second set of Exhibits, which includes a copy of the attorney search in the State Bar of California website for Richard Stanton Mark, which shows him as deceased, and a copy of the

FindLaw website with information regarding the Law Office of Richard Stanton Mark. Dckt. 113.

Review of Amended Proof of Claim No. 1-2

Amended Proof of Claim 1-2 was filed on July 28, 2020, in which Charmaine Mark and Matthew Mark, Trustees of the USRE Trust, are identified as the Creditor. Attached to Amended Proof of Claim 1-2 is a Promissory Note ("Note") in which Rakeshini Sharma, the Debtor, is the borrower of the identified sum of $297,000.00. Amd. POC 1-2, p. 7. The payee on the Note is stated to be the "Beneficiary, who is to be identified on Exhibit D." *Id*. The Exhibit D attached to the Note that is attached to Amended Proof of Claim No. 1-2 identifies the "Lender" as "USRE Trust."

Also attached to Amended Proof of Claim No. 1-2 is a Deed of Trust and Assignment of Rents. *Id*., pp. 11-27. The "borrower" identified in the Deed of Trust is Rakeshni Sharma and the Note secured is the July 11, 2019 Note for $297,000.00. The "Lender" that is the beneficiary under the Deed of Trust is stated to be identified on Exhibit D to the Deed of Trust. There is no Exhibit D attached to the Deed of Trust attached to the Amended Proof of Claim.

The final attachment to Amended Proof of Claim No. 1-2 is a copy of a document titled

USRE Trust

Trust Agreement

Id., pp. 33-40.

DECISION

Debtor is correct that the Deed of Trust attached to Amended Proof of Claim No. 1-2 does not have an Exhibit D attached to it to identify the beneficiary whose right to receive payment on the Note from Debtor is secured.

Debtor's counsel's "folksy" Declaration (Dckt. 112) discusses perusing the internet to locate USRE Corporation. In this case, the Creditor is the trustee of the USRE Trust. Exhibit D to the note identifies the payee as the Trust. As this court has discussed before, trusts are not separate legal entities, but hold title to property and assert rights and interest in the name of their trustees.

Counsel's declaration continues with speculation and argument, but little evidence.

What is missing is what the recorded deed of trust shows. While Counsel speculates as to what an ALTA policy may proved, Debtor has not obtained a certified copy of the Deed of Trust that was recorded and identifies who is on the Exhibit D thereto (if there is an Exhibit D).

Looking at the Certificate of Service filed by Debtor's Counsel, Dckt. 114, the following persons were served:

Charmaine Mark and Matthew Mark, Trustee
c/o Superior Loan Servicing
Attn: Managing Officer

7525 Topanga Canyon Blvd
Canoga Park, CA 91303

There is no showing that the loan servicer is the agent for service of process or that the Topanga Canyon Blvd address is the address of the Trustees.

Edward T. Weber, Esq.
17151 Newhope Street, Suite 203
Fountain Valley, California 92708

Kristi Marie Wells, Esq.
17151 Newhope Street, Suite 203
Fountain Valley, California 92708

These are two attorneys who have appeared in other contested matters and who signed Amended Proof of Claim No. 2-1 that asserted the Trustees of the USRE Trust as creditors. Nothing indicates that they are agents for service of process.

Thus, it appears that the creditor, Charmaine Mark, Trustee and Matthew Mark, Trustee, have not been served.

Going to the Secretary of State's website and doing a corporate search, the following information comes up concerning "United States Real Estate Corporation:"

C2728008 UNITED STATES REAL ESTATE CORPORATION

Registration Date:	03/21/2005
Jurisdiction:	CALIFORNIA
Entity Type:	DOMESTIC STOCK
Status:	ACTIVE

Agent for Service of Process:	MATTHEW MARK 33572 PACIFIC COAST HWY MALIBU CA 90265
Entity Address:	33572 PACIFIC COAST HWY MALIBU CA 90265
Entity Mailing Address:	33572 PACIFIC COAST HWY MALIBU CA 90265

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

The January 2, 2019 Statement of Information for United States Real Estate Corporation includes the following information:

Names and Complete Addresses of the Following Officers (The corporation must list these three officers. A comparable title for the specific officer may be added; however, the preprinted titles on this form must not be altered.)				
7. CHIEF EXECUTIVE OFFICER/	ADDRESS	CITY	STATE	ZIP CODE
CHARMAINE MARK	33572 PACIFIC COAST HWY, MALIBU, CA 90265			
8. SECRETARY	ADDRESS	CITY	STATE	ZIP CODE
MATTHEW MARK	33572 PACIFIC COAST HIGHWAY, MALIBU, CA 90265			
9. CHIEF FINANCIAL OFFICER/	ADDRESS	CITY	STATE	ZIP CODE
CHARMAINE MARK	33572 PACIFIC COAST HWY, MALIBU, CA 90265			
Names and Complete Addresses of All Directors, Including Directors Who are Also Officers (The corporation must have at least one director. Attach additional pages, if necessary.)				
10. NAME	ADDRESS	CITY	STATE	ZIP CODE
CHARMAINE MARK	33572 PACIFIC COAST HIGHWAY, MALIBU, CA 90265			
11. NAME	ADDRESS	CITY	STATE	ZIP CODE
MATTHEW MARK	33572 PACIFIC COAST HWY, MALIBU, CA 90265			

Id.

While the internet left Debtor's counsel confused as to how to locate the two trustees of the USRE Trust.

If the court sustains the Objection, it does not adjudicate the validity of the deed of trust or clear title for Debtor. Rather, it merely would order that the purported creditor not be paid through the Plan as a secured claim. As provided in Federal Rule of Bankruptcy Procedure 3007(b), if relief in the form as provided in Federal Rule of Bankruptcy Procedure 7001 is requested as part of the objection, then it must be brought by an adversary proceeding. Federal Rule of Bankruptcy Procedure 7001(2) requires an adversary proceeding to adjudicate the extent, validity, priority of a lien or other interest in property.

The prayer appears to be limiting the request relief to just how the claim would be paid in the case, not an adjudication of the interests in the real property.

> WHEREFORE Debtor prays that the Court issue an order Sustaining the Objection to the SECURED STATUS of the claim 1, and allow the claim as unsecured.

Objection, p. 5:1-3; Dckt. 109. However, if Debtor believed that merely allowing as an unsecured claim in the case would be an adjudication that Creditor did not have a lien against the Property, both Debtor and counsel could be subject to a very unpleasant surprise in the future.

At the hearing, counsel for Debtor addressed **xxxxxxx**

~~Based on the evidence before the court, Creditor's claim is disallowed in its entirety / Describe Portion Disallowed. The Objection to the Proof of Claim is sustained / overruled without prejudice.~~

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

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

The Objection to Claim of Charmaine Fay Maria Mark and Matthew Stanton Mark, Trustees of the USRE TRUST ("Creditor"), filed in this case by Rakeshni Devi Sharma, the 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 sustained / overruled, and the claim is disallowed in its entirety / Describe Portion Disallowed

Attorney's fees and costs, if any, shall be requested as provided by Federal Rule of Civil Procedure 54 and Federal Rules of Bankruptcy Procedure 7054 and 9014.

20. **17-23443-E-13 MRL-1** | **ROGER/MEGAN HOPPE** **Mikalah Liviakis** | **MOTION FOR COMPENSATION BY THE LAW OFFICE OF LIVIAKIS LAW FIRM FOR MIKALAH RAYMOND LIVIAKIS, DEBTORS ATTORNEY(S) 11-14-20 [48]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 16, 2020. By the court's calculation, 57 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Allowance of Professional Fees is granted.

Mikalah Raymond Liviakis, the Attorney ("Applicant") for Roger Kenneth Hoppe and Megan Elizabeth Hoppe, the Chapter 13 Debtor ("Client"), makes a Request for the Additional Allowance of Fees and Expenses in this case.

Fees are requested for the period June 7, 2018, through January 21, 2021. Applicant requests fees in the amount of $1,200.00 and costs in the amount of $0.00.

David P. Cusick, the Chapter 13 Trustee ("Trustee") opposes attorney's fees requested where the correct billing time should be 156 minutes or 2.6 for a total in additional compensation of $975.00 and not the $1,200.00 as requested. Dckt. 93.

Applicant filed a Reply on December 16, 2020 and agrees to accept the reduced amount of $975.00 but explains that the task on the billing sheet for October 25, 2018 for 36 minutes, which as stated by Trustee reduces the amount in fees, was inadvertently marked as "(No Charge)." Dckt. 55. [Fn.1.]

FN. 1. The court finds applicant's time record keeping a bit "curious." There are estimated minutes billed, such as 24, 36, 60,12, 24, and 36. Common time keeping by attorneys are in tenths of hours (six minute intervals), rounded up to the next highest tenth of an hour. While not "exact to the minute," it provides a reasonable and fair time keeping and billing method. Here, Applicant states "estimates" as to minutes. It is not clear if Applicant is accurately keeping track of time, how one estimates to the minute. Either the records are accurately kept to the minute or not. Rather than having a "to the minute" estimate, Applicant may want to use the more transparent "estimate" of tenths of an hour in billing.

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 responding to three separate motions to dismiss filed by the Trustee. 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.

Trustee's Three Motions to Dismiss: Applicant spent 2.2 hours in this category. Applicant communicated with Debtors, calculated plan payments and modification options, and drafted response, with respect to three unanticipated Motions to Dismiss Case filed by the Chapter 13 Trustee.

Fee Application: Applicant spent 1.0 hours in this category. Applicant drafted the instant application for compensation.

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**
Mikalah R. Liviakis	3.2	$375.00	$1,200.00
Total Fees for Period of Application			$1,200.00

Costs and Expenses

Applicant does not seek the allowance and recovery of costs and expenses in this application.

FEES AND COSTS & EXPENSES ALLOWED

Fees

The unique facts surrounding the case, including responding to three separate motions to dismiss filed by the Trustee, 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.

As stated in Applicant's Reply, Applicant agrees to a reduced fee of $975.00 due to the billing summary provided showing the correct time to be charged is 2.6 hours instead of 3.20. Thus, the request for additional fees in the amount of $975.00 is approved pursuant to 11 U.S.C. § 330 and authorized to be paid by 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	$975.00
Costs and Expenses	$0.00

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 Mikalah R. Liviakis ("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 Mikalah R. Liviakis is allowed the following fees and expenses as a professional of the Estate:

Mikalah R. Liviakis, Professional Employed by Roger Kenneth Hoppe and Megan Elizabeth Hoppe ("Debtor")

Fees in the amount of $975.00
Expenses in the amount of $0.00,

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 P. Cusick ("the Chapter 13 Trustee") is authorized to pay the fees allowed by this Order from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

21. 20-23454-E-13 MM-2 | **JUANETHEL ALEXANDER** **Matthew Mellen** | **MOTION TO CONFIRM PLAN** **11-18-20 [37]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on November 18, 2020. By the court's calculation, 55 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, Juanethel Alexander ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for payments of $1,600.00 for 60 months and a 100 percent dividend to unsecured claims totaling $17,795.82. Amended Plan, Dckt. 39. 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 December 23, 2020. Dckt. 48. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor is delinquent in plan payments.

B. Debtor may not be able to make plan payments.

C. Motion fails to state grounds with particularity and no declaration in support of the motion.

Review of Minimum Pleading Requirements for a Motion

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

Consistent with this court's repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, applied the general pleading requirements enunciated by the United States Supreme Court to the pleading with particularity requirement of Bankruptcy Rule 9013. *See* 434 B.R. 644, 646 (N.D. Ala. 2010) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 545 (2007)). The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal* to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court. *See* 556 U.S. 662 (2009).

Federal Rule of Bankruptcy Procedure 9013 incorporates the "state with particularity" requirement of Federal Rule of Civil Procedure 7(b), which is also incorporated into adversary proceedings by Federal Rule of Bankruptcy Procedure 7007. Interestingly, in adopting the Federal Rules of Civil Procedure and of Bankruptcy Procedure, the Supreme Court endorsed a stricter, state-with-particularity-the-grounds-upon-which-the-relief-is-based standard for motions rather than the "short and plain statement" standard for a complaint.

Law and motion practice in bankruptcy court demonstrates why such particularity is required in motions. Many of the substantive legal proceedings are conducted in the bankruptcy court through the law and motion process. These include sales of real and personal property, valuation of a creditor's secured claim, determination of a debtor's exemptions, confirmation of a plan, objection to a claim (which is a contested matter similar to a motion), abandonment of property from the estate, relief from the automatic stay, motions to avoid liens, objections to plans in Chapter 13 cases (akin to a motion), use of cash collateral, and secured and unsecured borrowing.

The court in *Weatherford* considered the impact to other parties in a bankruptcy case and to the court, holding,

> The Court cannot adequately prepare for the docket when a motion simply states conclusions with no supporting factual allegations. The respondents to such motions cannot adequately prepare for the hearing when there are no factual allegations supporting the relief sought. Bankruptcy is a national practice and creditors sometimes do not have the time or economic incentive to be represented at each and every docket to defend against entirely deficient pleadings. Likewise, debtors should not have to defend against facially baseless or conclusory claims.

434 B.R. at 649–50; *see also In re White*, 409 B.R. 491, 494 (Bankr. N.D. Ind. 2009) (holding that a proper motion must contain factual allegations concerning requirements of the relief sought, not conclusory allegations or mechanical recitations of the elements).

The courts of appeals agree. The Tenth Circuit Court of Appeals rejected an objection filed by a party to the form of a proposed order as being a motion. *St. Paul Fire & Marine Ins. Co. v.*

Continental Casualty Co., 684 F.2d 691, 693 (10th Cir. 1982). The Seventh Circuit Court of Appeals refused to allow a party to use a memorandum to fulfill the pleading with particularity requirement in a motion, stating:

> Rule 7(b)(1) of the Federal Rules of Civil Procedure provides that all applications to the court for orders shall be by motion, which unless made during a hearing or trial, "shall be made in writing, [and] *shall state with particularity the grounds therefor*, and shall set forth the relief or order sought." The standard for "particularity" has been determined to mean "reasonable specification."

Martinez v. Trainor, 556 F.2d 818, 819–20 (7th Cir. 1977) (citing 2-A JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶ 7.05 (3d ed. 1975)).

Not stating with particularity the grounds in a motion can be used as a tool to abuse other parties to a proceeding, hiding from those parties grounds upon which a motion is based in densely drafted points and authorities—buried between extensive citations, quotations, legal arguments, and factual arguments. Noncompliance with Federal Rule of Bankruptcy Procedure 9013 may be a further abusive practice in an attempt to circumvent Bankruptcy Rule 9011 by floating baseless contentions to mislead other parties and the court. By hiding possible grounds in citations, quotations, legal arguments, and factual arguments, a movant bent on mischief could contend that what the court and other parties took to be claims or factual contentions in the points and authorities were "mere academic postulations" not intended to be representations to the court concerning any actual claims and contentions in the specific motion or an assertion that evidentiary support exists for such "postulations."

Grounds Stated in Motion

Movant has not provided any grounds, merely unsupported conclusions of law. The insufficient statements made by Movant are:

> A. The modified plan is proposed in order to allow Debtor to pay off all secured creditors and unsecured debt.
>
> A. For the reasons set forth herein, Debtor respectfully requests that the Court grant the instant motion and confirm the First Amended Chapter 13 Plan.

Those "grounds" are merely a conclusion of law by Movant. Presumably, Movant believed that the court would make those conclusions, but the "grounds" cannot merely state the anticipated conclusions.

Failure To Provide Evidence

Debtor's counsel has also failed to file a Declaration in support of confirmation of the plan.

At a very basic level, every law student is taught that the court relies on properly authenticated, admissible evidence to establish facts in any proceeding–the court cannot and does not merely take counsel at their word. Apart from the practical effect that the court has been given a request for relief without any established factual basis, the Local Rules also affirmatively require that evidence

be filed along with every motion and request for relief. LOCAL BANKR. R. 9014-1(d)(3)(D).

Movant is reminded that "[f]ailure of counsel or of a party to comply with these [Local Bankruptcy] Rules . . . may be grounds for imposition of any and all sanctions authorized by statute or rule within the inherent power of the Court, including without limitation, **dismissal of any action**, entry of default, finding of contempt, imposition of monetary sanctions or attorneys' fees and costs, and other lesser sanctions." LOCAL BANKR. R. 1001-1(g) (emphasis added).

Delinquency

The Chapter 13 Trustee asserts that Debtor is $1,600.00 delinquent in plan payments, which represents one month of the $1,600.00 plan payment. Before the hearing, another plan payment will be due. According to the Chapter 13 Trustee, the Plan in § 2.01 calls for payments to be received by the Chapter 13 Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Failure to Afford Plan Payment

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Trustee argues that Debtor's existing budget does not seem to support Debtor's ability to make the proposed plan payment and that due to her "unique situation," declarations from Debtor's cousin and sister would be helpful to explain the existing budget.

Moreover, Trustee contends that the proposed plan payment for $1,600 is higher than the amount available for the plan where Debtor's only source of income is social security in the amount $1,870, with expenses of $624.00 which leaves only $1,246.00 available for the plan payment.

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, Juanethel Alexander ("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.

22. **16-23656-E-13 SS-8** | **WILLIAM/LORI CARPENTER** **Scott Shumaker** | **MOTION FOR COMPENSATION FOR SCOTT SHUMAKER, DEBTORS ATTORNEY(S)** **12-22-20 [225]**

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 December 22, 2020. By the court's calculation, 21 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 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.

Scott D. Shumaker, the Attorney ("Applicant") for William Scott Carpenter and Lori Marie Carpenter, 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 May 17, 2017, through December 21, 2020. Applicant requests fees in the amount of $7,217.50 and costs in the amount of $50.00.

The Chapter 13 Trustee filed a Response on December 29, 2020. Dckt. 230. Trustee states that Debtor is currently behind $2,531.00 in plan payments and $1,453.47 remain to be paid to priority claim which Trustee will distribute after this motion is heard. *Id.*, ¶ 1. Trustee believes Applicant has performed well in this case. *Id.* Trustee adds that the post-confirmation work consisted of four motions to dismiss, two motions to modify, and the present motion for compensation but that the time spent on

this motion appears extraordinary to the Trustee. *Id*., ¶ 2.

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 responding to four motions to dismiss, and preparing two motions to modify and the present motion for compensation. 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. 192. 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.

Pre-Confirmation Services: Applicant prepared a Motion to Value, a Motion to Confirm Plan (which was denied), and responded to a Motion for Relief, and also prepared a Request for Loan Modification.

Post-Confirmation Services and Motions to Dismiss: Applicant responded and appeared at the hearings related to four (4) motions to dismiss filed by Trustee and prepared a modified plan and corresponding motion to modify the 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
Scott Shumaker, Attorney		$350.00	$6,692.50
Piotr Reysner, Paralegal		$150.00	$525.00
Total Fees for Period of Application			$7,217.50

Costs and Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $50.00 pursuant to this application. Applicant does not provide a description of the costs requested.

FEES AND COSTS & EXPENSES ALLOWED

Fees

The unique facts surrounding the case, including responding to four motions to dismiss, and preparing two motions to modify and the present motion for compensation, 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 in the amount of $7,217.50 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.

Costs & Expenses

Applicant having failed to provide the necessary information as to what costs amounted to $50.00, the court does not approve any costs with this Application.

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

Fees	$7,217.50
Costs and Expenses	$0.00

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 Scott D. Shumaker ("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 Scott D. Shumaker is allowed the following fees and expenses as a professional of the Estate:

Scott D. Shumaker, Professional Employed by William Scott Carpenter and Lori Marie Carpenter ("Debtor")

Fees in the amount of $7,217.50
Expenses in the amount of $0.00,

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

IT IS FURTHER ORDERED that David Cusick ("the Chapter 13 Trustee") is authorized to pay the fees allowed by this Order from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

23. **20-23675-E-13 TLA-1** **WALTER/ADREENA ISLAND** **Thomas Amberg** **MOTION TO MODIFY PLAN** **11-25-20 [31]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 25, 2020. By the court's calculation, 48 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, Walter Edward Island and Adreena Christine Island ("Debtor") seek confirmation of the Modified Plan to account for Debtor Walter no longer holding a second job and the projected tax claims came in significantly higher than originally anticipated. Declaration, Dckt. 33. The Modified Plan provides $2,744.00 for the remainder of the plan, and a 30 percent dividend to unsecured claims totaling 43,836.94. Modified Plan, Dckt. 35. 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 December 16, 2020. Dckt. 37. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor did not file Supplemental Schedules I and J in the court's docket but as exhibits.

B. Debtor seeks to reduce their plan payment while Debtor continues to pay

a $500.00 voluntary retirement contribution.

DISCUSSION

Supplemental Schedules I and J

Trustee notes that Debtor filed Supplemental Schedules I and J in support of confirmation as exhibits but failed to identify them on the court's docket as supplemental schedules. Trustee argues that this would potential affect parties that need to find Debtor's most recent budget.

On December 22, 2020, Debtor filed their supplemental schedules as a separate docket entry. *See* Dckt. 40.

Voluntary Retirement Contribution

Trustee argues that Debtor proposes to reduce their plan payment by $626.00 and reduce the percentage to unsecured claims by 70% due to Debtor Walter no longer working a second job, yet Debtor seeks to keep a $500.00 voluntary retirement contribution for Debtor Adreena. Due to the reductions in payment and in dividend, Trustee opposes the continuation of this voluntary contribution.

Debtor filed a Response on December 23, 2020 agreeing with Trustee and propose to remove this deduction and increase their plan payment by $250 (for a total monthly payment of $2,994.00) beginning in January 2021. Response, Dckt. 41, ¶ 3. Debtor asserts that this increase reflects the removal of the 401(k) contribution, and it factors in the additional taxes that the Debtor will pay on this income. *Id.*

Trustee filed an Amended Response no longer opposing the confirmation of the plan now that Debtor has addressed Trustee's concerns.

Debtor addressing Trustee's concerns, the Modified Plan, as amended, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Walter Edward Island and Adreena Christine Island ("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 November 25, 2020, as amended, to increase the plan payment to $2,994, 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.

24. **19-24178-E-13** **JOSE HERNANDEZ** **MOTION TO APPROVE LOAN MODIFICATION**
PGM-2 **Peter Macaluso** **12-4-20 [66]**

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 December 4, 2020. By the court's calculation, 39 days' notice was provided. 28 days' notice is required.

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

The Motion to Approve Loan Modification is xxxxx.

The Motion to Approve Loan Modification filed by Jose Luis Hernandez ("Debtor") seeks court approval for Debtor to incur post-petition credit, specifically Debtor states seeking approval for a permanent loan modification. Rushmore Loan Management Services / SN Servicing Corporation ("Creditor"), whose claim the Plan provides for in Class 1, has agreed to a loan modification that will adjust Debtor's mortgage payment to $3,722.83 per month.

The Motion is supported by the Declaration of Jose Luis Hernandez. Dckt. 68. The Declaration affirms Debtor's desire to obtain the post-petition financing and provides evidence of Debtor's ability to pay this claim on the modified terms.

DISCUSSION

Trustee filed an Objection on December 17, 2020. Dckt. 71. Trustee objects to the loan modification on the basis that:

1. Debtor is delinquent $10,905.00 in plan payments.

2. The Agreement specifically states that this is a trial loan modification,

not a permanent loan modification.

3. Debtor and Creditor appeared to have entered into the agreement on November 30, 2020, thus ignoring the plan which states Trustee is to be disbursing payments on the ongoing mortgage and arrearage.

4. The notary seal on the Agreement indicates that the notary's commission expired June 2020, and as such the Agreement may not be effective.

A review of the Loan Modification Agreement, filed as Exhibit A (Dckt. 69) states that said Agreement is contingent upon Debtor completing a trial payment plan of one year from January 1, 2021 through December 1, 2021. Exhibit A at p. 4, ¶ 1.

Debtor's Reply

Debtor filed a Reply on January 5, 2020. Dckt. 74. Debtor states that a motion to modify the plan would be filed, set and served in order to address Trustee's concerns and that the plan would continue to provide a 100% dividend to creditors. *Id.*, ¶ 1. Debtor also states that once the trial period concludes, the modification will automatically become permanent. *Id.*, ¶ 2. In his Declaration, Debtor testifies that Debtor's bank, Bank of America, explained to him that California Executive Order N-63-20 extended the expiration dates of notary commission term by 180 days. Declaration, Dckt. 76.

In the Reply Debtor requested the hearing on this motion be continued until after the forthcoming Motion to Modify the plan. Debtor filed the Motion to Modify the plan and a Modified Plan on January 8, 2021. Dckts. 78, 81. The motion has been set for hearing at 2:00 p.m. on February 23, 2021.

Second Modified Plan Filed

On January 8, 2021, Debtor filed a Second Modified Plan and a Motion to Confirm. Dckts. 81, 78. The proposed Second Modified Plan includes a 100% dividend to creditors holding general unsecured claims and provides for paying the claim represented by the modification as a Class 4 claim.

DECISION

At the hearing, xxxxxxxx

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

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

The Motion to Approve Loan Modification filed by Jose Luis Hernandez ("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 Approve Loan Modification is xxxxx.

25. 19-21657-E-13 TLA-1 ANDRES/YVETTE HERRERA MOTION TO INCUR DEBT 12-15-20 [22]

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

Below is the court's tentative ruling.

Sufficient Notice Provided: This *Ex Parte* Motion was set for hearing pursuant to the Order of the Court.

The Motion to Incur Debt is xxxxx.

Andres and Yvette Herrera ("Debtor") commenced their Chapter 13 case on March 18, 2019. Debtor's Chapter 13 Plan was confirmed on May 13, 2019. Order, Dckt. 15. The significant terms of the Plan, as amended by the Order confirming, include:

A. Debtor is able to fund the Plan with $495.00 for one month and $650.00 for 59 months. Plan, ¶2.01, Order; Dckts. 4, 15. The Plan payments by Debtor total $38,945.00.

B. Debtor's counsel is to be paid ($2,810.00) through the Plan from the above payments. *Id.*, ¶ 3.05. The Chapter 13 Trustee's fees is 10% of the plan payments, which fees total ($3,984.00). After paying these two expenses, Debtor is able to provide $32,240.50 to fund the plan for creditor distributions.

C. For secured claims, Debtor has only one creditor, with a claim secured by Debtor's 2015 Ford Focus. *Id.*, ¶ 3.07, 3.08. For Proof of Claim No. 7-2 filed by this Creditor, the total payments on this secured claim over sixty months is ($6,775.28).

D. For priority unsecured claims, the Internal Revenue Service has a claim of ($10,296.20) to be paid as a Class 5 priority.

E. After paying the above expenses, secured claim and priority claim, there remains $15,169 to be disbursed for the ($73,903) in general unsecured claims identified in the Plan. *Id.*, ¶ 3.14. In the order confirming, it states that creditors holding general unsecured claims are to receive a 35% dividend. With unsecured claims of ($73,903), the Plan appears to fund only a 20% dividend. The Trustee's Report of Claims Filed (Dckt. 19, filed January 16, 2020) states that the general unsecured claims (not appearing to include lease claims) actually filed total ($73,150.07).

The Plan then lists two leases that Debtor is not rejecting. One is for a 2017 Ford Explorer

with a monthly lease payment of $733 and a 2016 Ford Escape with a $278 monthly lease payment. *Id.*, ¶4.02.

Looking at Schedule I, Mr. Herrera has $8,478.00 in gross monthly income and Mrs. Herrera has $5,900.00 in gross monthly income for annual gross income of $172,536. Dckt. 1 at 34-35. The one unusual looking deduction is for Mrs. Herrera having $1,005.00 a month taken out for "Def. Comp." Both Mr. and Mrs. Herrera work for governmental entities (one 29 years and the other 14 years) that normally provide defined benefit retirement plans through CalPERS. [FN.1]

FN.1. On Schedule A/B Debtor lists having a retirement asset (in additional to CalPERS) of a "457(b) ICMARC" with a value as of the commencement of this case of $89,905.00. Dckt. 1 at 15. The Internal Revenue Service website information about "457(b)'s" include:

Who can establish a 457(b) plan?

The organization must be a state or local government or a tax-exempt organization under IRC 501(c).

How do 457(b) plans work?

Employers or employees through salary reductions contribute up to the IRC 402(g) limit ($19,500 in 2021 and in 2020; $19,000 in 2019) on behalf of participants under the plan. See 457(b) plan contribution limits.

What are the advantages of participating in a 457(b) plan?

There are significant tax advantages for participants in a 457(b) plan:

- Contributions to a 457(b) plan are tax-deferred.
- Earnings on the retirement money are tax-deferred

https://www.irs.gov/retirement-plans/irc-457b-deferred-compensation-plans. Thus, it appears that Debtor have continued to voluntarily take monies, in addition to their CalPERS retirements, out of monthly income and choose to place it into the $100,000+ additional retirement fund.

After withholding and deductions, Debtor has $8,014.00 a month in take-home income.

On the expense side, on Schedule J Debtor states that the reasonable and necessary expenses for these Chapter 13 debtors is ($7,519) a month. Dckt. 1 at 36-38. Debtor's dependents, who do not contribute anything to Debtor for expenses (nothing shown on Schedule I as income), are:

Daughter.....age 21

Son.....age 30

Daughter in Law.....age 31

Grandchild.....age 5

Grandchild.....age 10

Nothing on the Schedules indicate that there are any special needs family members.

On Schedule J Debtor lists having two car payments: ($279.00) and ($733.00) (the lease that has now expired). In the Chapter 13 Plan Debtor provides for a third car payment of $120.00 a month for the 2015 Ford Focus. Plan, Class 2(A); Dckt. 4.

On Schedule A/B Debtor lists having three vehicles: a 2016 Ford Escape which is leased, a 2015 Ford Focus with a value of $4,638.00, and the 2017 Ford Explorer with the ($733) a month lease payment. Dckt. 1 at 13.

Debtor's vehicle insurance bill is ($525) a month, which is ($6,300) annually. Schedule J; Dckt. 1 at 38.

Motion to Incur Debt For New Vehicle Lease

In the Motion (Dckt. 22) Debtor states that the $733 a month, $8,796 a year, lease payments for the 2016 Ford Escape have come to an end, and Debtor is no longer paying $8,796 in payments for a vehicle in which Debtor has no ownership interest. From reviewing Proof of Claim No. 2-1 filed by Ford Motor Credit Company, LLC, the first ($732.90) monthly payment on this lease was due on October 22, 2017 and the final payment of ($732.90) was due thirty eight months later in November 2020, with the thirty-nine lease payments totaling ($28,583.10) (with Debtor acquiring no interest in or ownership of the leased vehicle for the ($28,583.10) in payments).

Having now been freed of the $8,796 a year in lease payments that Debtor voluntarily elected to assume through the Plan, Debtor has arranged for a replacement vehicle. The replacement is a brand new 2020, with no depreciation having yet occurred, Ford Escape. For this vehicle, the lease payments are "only" $467.33 a month, totaling $5,607.96 annually, for a brand new vehicle that Debtor is not acquiring an ownership interest.

This new lease is for 36 months, with the total amount to be paid by Debtor for the use of the Ford Escape, but never acquiring any interest in said vehicle, totaling $16,823.88, with the last payment due in October 2023 - which will be five months after Debtor has completed the sixty-months of toiling under the Chapter 13 Plan in this case.

Neither the Motion nor the Declaration (Dckt. 23) offer any economic reason why it is necessary for Debtor, in sufficient financial distress to seek the extraordinary relief under the Bankruptcy Code, to now want to lease another brand new vehicle on a thirty-six month lease. Nor why having spent $28,583.10 on a vehicle in which Debtor never acquired any ownership interest, an additional $16,823.88 is proper. [Fn.2.]

FN.2. In the Declaration, the factual testimony upon which Debtor bases the assertion that the lease of this brand new, 2020 vehicle is reasonable consists of:

9. We believe that the lease of this vehicle is in our best financial interests.

Dec., ¶ 9; Dckt. 23.

Debtor offers Supplemental Schedules I and J Forms as exhibits to support this request for a new vehicle lease. Dckt. 24. While filed as exhibits, Debtor has chosen to not file them as supplemental schedules.

Looking at the Supplemental Schedule I form filed as Exhibit A, the two debtors state they have $14,432 a month in gross income. Looking at the deductions, one debtor has a $1,005.00 a month deduction for "Def. Comp." It is not clear why this is a voluntary deduction for deferred compensation that transfers $1,000 a month, $12,000 a year, and $60,000 of what should be projected disposable income to Debtor and from distribution to creditors is reasonable.

On the Exhibit Supplemental Schedule J form, Debtor lists expenses. Debtor's "dependents" continued to be two adult children, an adult child in law, and two grandchildren. On the Exhibit Supplemental Schedule I form no income contribution is shown for the three adult "dependents."

NON-OPPOSITION OF TRUSTEE

Below Debtor's counsel's signature block on the Motion is a statement of Non-Opposition from the Chapter 13 Trustee. The Non-Opposition is stated as:

> The Trustee can certify that the Debtors are current on their plan payments and the plan is not in default. The Trustee does not have any opposition to the Debtors' application.

Motion, p. 2:22-23; Dckt. 22. This statement is signed by counsel for the Chapter 13 Trustee. The Trustee offers no insight as to why the Trustee believes the lease of a new vehicle is reasonable. Nor does the Trustee note any extraordinary circumstances relating to the adult dependents and the multi-generation dependents with no contributions from the adult dependents.

NON-GRANTING OF *EX PARTE* MOTION

Upon review of the Motion and supporting pleadings, the court could not determine that Debtor's desire to lease and drive a brand new, 2020, vehicle is reasonable or requested in good faith. Debtor struggles to make a discounted percentage distribution to Debtor's creditors. But Debtor has three adult children who are dependents who contribute nothing to the household expenses. In addition, Debtor has two grandchildren who are "dependent," for which no contribution is made by their parents.

It may be that there are extraordinary facts and circumstances concerning the dependents. It may be that there are extraordinary facts and circumstances justifying these Chapter 13 debtors "needing" to lease a brand new vehicle. However, no evidence of such extraordinary facts were presented to the court.

The court set the *Ex Parte* Motion for Hearing and afforded Debtor the opportunity to present such evidence.

SUPPLEMENTAL EVIDENCE PROVIDED BY DEBTOR

On December 29, 2020 Debtor promptly (the court having allowed Debtor until January 5, 2021) filed a Supplemental Declaration in support of the Motion. Supp. Dec., Dckt. 27. The Supplemental Declaration provides the additional testimony of the both the debtors in this bankruptcy case which addresses the following:

a. With respect to the "Deferred Comp" Debtor provides the following testimony:

> The "deferred comp" here relates to Mrs. Herrera's decision to defer the medical portion of her compensation, as insurance for the family is provided through Mr. Herrera's job.

Supp. Dec, ¶ 3, *Id*.

The court's read of this testimony is that there is no reasonable or necessary medical expense for Mrs. Herrera to have deducted from her salary, so since there is no reasonable or necessary expenses, Debtor has decided to take that portion of the projected disposable income from creditors and put it in Debtor's pocket. This appears to be akin to say that since Mrs. Herrera has a government defined benefit pension and it is not reasonable or necessary to fund her own 401k or IRA, she has decided to take the projected disposable income rather than have it go to her Debtor's creditors.

At the hearing, counsel for Debtor addressed this point, **xxxxxxx**

b. With respect to the extended family members that are "dependents," Debtor first provides testimony that Debtor's son, daughter-in-law, and one grandchild live with Debtor. The testimony is that the son's former job has terminated and it has been a challenge for him to get back on his feet. While he is in the process of applying for a new job, due to the length of time between the termination of his former job and now, "he has not been eligible for many benefits."

Id., ¶4.

The court can appreciate the need for and the reasonableness of family support through hard times. However, while referencing not being eligible now for "many benefits," Debtor fails to disclose what benefits are being received and have been received. Additionally, Debtor provides no testimony as to the income, whether employed or through benefits/social service programs that Debtor's daughter in law is receiving.

At the hearing counsel for the Debtor addressed this point, **xxxxxxx**

c. With respect to Debtor's daughter, testimony generally stating that she has been applying for jobs, but has had some "issues" passing her probationary period. (Being in a probationary period would indicate employment.) It is stated that the daughter has been receiving "some unemployment income," but is using it to "pay for some of her own expenses." (It appears that these expenses do not include

contributing to housing and food.) Debtor hopes that the daughter will soon be able to support herself.

Id., ¶5.

As stated above, the court appreciates the need for family support and implicit in the short statement is that there may be some special needs. However, that testimony is not provided. No information is provided as to the Daughter's probationary income or her unemployment income and the "necessary" expenses above food and housing contributions that are being made by the Daughter.

At the hearing, counsel for Debtor addressed this point, **xxxxxxx**

d. Debtor's testimony then addresses what Debtor perceives as the court's concern that they would not purchase their four year old leased vehicle, for which they had been paying $800 a month to lease, rather than leasing a brand new vehicle. Debtor testifies that Debtor chose not to because they had "substantial mechanical issues" with the $800 a month leased vehicle. (This raises the issue that if there were substantial mechanical problems with a vehicle Debtor was leasing for $800 a month, why did Debtor keep paying $800 a month for a defective vehicle.) Debtor testifies that to purchase the defective vehicle would have cost Debtor $800 a month.

Id., ¶6, 7.

The court's "concern" related to the Debtor driven to the extraordinary cliff of bankruptcy relief, finding it necessary to lease a vehicle for $800 a month. But Debtor raises a good point, after investing the $800 a month for the vehicle, why not purchase it? Debtor's explanation raises the serious issue of why, if the vehicle had serious mechanical issues, they did not reject the lease, assert there was a breach by the lessor, and free themselves of the $800 a month, $9,600 a year, for a total of $16,823.88 additional post-confirmation for the lease. Rejection of a lease is a simple process in a bankruptcy case.

At the hearing Debtor's counsel addressed this issue, **xxxxxxx**

e. For the new lease, Debtor does not provide any economic analysis of why choosing to lease a brand new vehicle makes reasonable economic sense for these two high (compared to the "ordinary" Chapter 13 case) income debtors. Rather, they offer their conclusion that it makes economic sense since it will be a new vehicle and covered by the ususal manufacture's warranties for a brand new vehicle. Debtor states they got a "first responder" discount, but do not provide the economic analysis of this "discount" as it applies to leasing this brand new vehicle (and paying down the big new vehicle depreciation) rather than buying a gently used vehicle that is a couple years old and already depreciated.

Id., ¶ 9.

This testimony provides the court with little, if anything, of concluding that a good faith,

bona fide economic basis exists for having Debtor lease a brand new vehicle. The fact that Debtor has reduced the lease price from the $800 a month Debtor paid for a defective vehicle (which lease Debtor did not challenge because the vehicle was defective or exercise Debtor's right to reject the lease) is not a great positive. Rather, it is just a smaller negative.

Without any economic information provided, Debtor and Debtor's counsel reduces the federal judge to nothing more than their rubber stamp.

At the hearing, Debtor's counsel addressed this point, **xxxxxxx**

f. Finally, the Declaration closes with Debtor stating that they "understand" that the court "would like them" to appear at the January 12, 2021 hearing. This is stated as if Debtor has been given an invitation to an event for which they can appear if it suits them or elect not to appear.

Id., ¶11.

The court ordered the two debtors and their counsel to appear. It may be that Debtor's counsel did not explain to the two debtors that they were ordered to appear in federal court. Counsel may have advised them that it would be "good" if they appeared. Or it may be that the language in Paragraph 11 is just an unfortunate choice of words by Debtor's counsel.

At the hearing, Debtor's counsel addressed this point, **xxxxxxx**

Review of Debtor's Schedules and Claims

Debtor's Supplemental Declaration caused the court to go back and look further at the Schedules and Claims in this case. On Schedule A/B, Debtor lists owning three vehicles for the two debtors. Dckt. 1 at 13. Debtor had, as of the commencement of the case, $8,425 in a credit union account, in addition to the CalPERS pension and the 457(b). As of the March 2019 filing of this case, there was a undetermined tax refund that was anticipated.

On the debt side, Debtor lists on Schedule E (general unsecured claims) fifteen consumer credit cards as the first eight creditors. *Id*. at 23-69. This is followed by two Wells Fargo consumer credit accounts. In all, these total $73,903. It appears that consumer debt (which may have been necessary to assist in supporting family) is at the heart of this bankruptcy case. On the other hand, Debtor did find it reasonable and necessary to lease a vehicle for $800 a month while facing serious financial distress.

DECISION

As addressed in the Order setting the hearing and discussed above, the court had significant reservations concerning Debtor's request to enter into a new vehicle lease. The court had concerns about Debtor electing to divert projected disposable income from Mrs. Herrera's earnings that was not necessary to pay for health insurance, because that necessary expense was being withheld from Mr. Herrera's earning, into Mrs. Herrera's deferred compensation rather than being part of the projected

disposable income funding the plan.

xxxxxxx

FINAL RULINGS

26. 20-23200-E-13 BLG-3 — JOHN MONROE — Chad Johnson — MOTION TO CONFIRM PLAN — 11-25-20 [41]

Final Ruling: No appearance at the January 12, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 25, 2020. By the court's calculation, 48 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, John Henry Monroe ("Debtor") has provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on December 23, 2020. Dckt. 49. 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, John Henry Monroe ("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 November 25, 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.

27.	**20-24800-E-13** **DPC-1**	**JOE MATTHEWS** **Mohammad Mokarram**	**OBJECTION TO DEBTORS 11 U.S.C. SEC. 1328 CERTIFICATION BY DAVID P. CUSICK** **11-25-20 [13]**

Final Ruling: No appearance at the January 12, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on November 25, 2020. By the court's calculation, 48 days' notice was provided. 28 days' notice is required.

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

The Objection to Discharge is sustained.

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

Debtor filed a Chapter 7 bankruptcy case on May 25, 2017. Case No. 17-23544. Debtor received a discharge on December 12, 2017. Case No. 17-23544, Dckt. 80.

The instant case was filed under Chapter 13 on October 16, 2020.

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

Here, Debtor received a discharge under 11 U.S.C. § 727 on December 12, 2017, which is less than four years preceding the date of the filing of the instant case. Case No. 17-23544, Dckt. 80. Therefore, pursuant to 11 U.S.C. § 1328(f)(1), Debtor is not eligible for a discharge in the instant case.

Therefore, the Objection is sustained. Upon successful completion of the instant case (Case No. 20-24800), the case shall be closed without the entry of a discharge, and Debtor shall receive no discharge in the instant case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Discharge filed by David P. Cusick, the Chapter 13 Trustee, ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to Discharge is sustained, and upon successful completion of the instant case, Case No. 20-24800, the case shall be closed without the entry of a discharge.

28. **20-24615-E-13 DPC-1** **RUDY/KAREN MENDEZ** **Thomas Amberg** **OBJECTION TO DISCHARGE BY DAVID P. CUSICK** **11-18-20 [27]**

Final Ruling: No appearance at the January 12, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney, on November 18, 2020. By the court's calculation, 55 days' notice was provided. 28 days' notice is required.

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

The Objection to Discharge is sustained.

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

Debtor filed a Chapter 7 bankruptcy case on October 8, 2018. Case No. 18-26342. Debtor received a discharge on May 1, 2019. Case No. 18-26342, Dckt. 73.

The instant case was filed under Chapter 13 on October 1, 2020.

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

Here, Debtor received a discharge under 11 U.S.C. § 727 on May 1, 2019, which is less than four years preceding the date of the filing of the instant case. Case No. 18-26342, Dckt. 73. Therefore, pursuant to 11 U.S.C. § 1328(f)(1), Debtor is not eligible for a discharge in the instant case.

Therefore, the Objection is sustained. Upon successful completion of the instant case (Case No. 20-24615), the case shall be closed without the entry of a discharge, and Debtor shall receive no discharge in the instant case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Discharge filed by David Cusick, the Chapter 13 Trustee, ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to Discharge is sustained, and upon successful completion of the instant case, Case No. 20-24615, the case shall be closed without the entry of a discharge.

29. 20-24518-E-13 ROLANDO/IRENE WIJANGCO MOTION TO CONFIRM PLAN
LTF-1 Lars Fuller 11-9-20 [16]

Final Ruling: No appearance at the January 12, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 9, 2020. By the court's calculation, 64 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, Rolando F. Wijangco and Irene A. Wijangco ("Debtor") have provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on December 29, 2020. Dckt. 35. 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, Rolando F. Wijangco and Irene A. Wijangco ("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 November 9, 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.

30. 20-21721-E-13 SLH-1 — KIRKWINDELL GARLIT, Seth Hanson — MOTION TO CONFIRM PLAN, 11-24-20 [38]

Final Ruling: No appearance at the January 12, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on November 24, 2020. By the court's calculation, 49 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Kirkwindell Sablad Garlit ("Debtor"), has provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on December 29, 2020. Dckt. 43. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

Kirkwindell Sablad Garlit ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Debtor's Chapter 13 Plan filed on March 23, 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.

31. **19-26529-E-13 MJD-3** | **PAUL WILSON AND JESSICA MAINVOILLE-WILSON** **Matthew DeCaminada** | **MOTION TO CONFIRM PLAN 11-16-20 [79]**

Final Ruling: No appearance at the January 12, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 16, 2020. By the court's calculation, 57 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, Paul Wilson and Jessica Lucia Mainvoille-Wilson ("Debtor") have provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on December 16, 2020. Dckt. 86. 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, Paul Wilson and Jessica Lucia Mainvoille-Wilson ("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 November 16, 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.

32. **20-23835-E-13 MRL-1** | **ROYLEE/FLORENCE WOOLFORD** | **MOTION TO CONFIRM PLAN 11-30-20 [23]**
Mikalah Liviakis

Final Ruling: No appearance at the January 12, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on November 30, 2020. By the court's calculation, 43 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Roylee Woolford and Florence Maureen Woolford ("Debtor"), have provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on December 16, 2020. Dckt. 28. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

Plan filed on August 5, 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.

33. 19-26637-E-13 PSB-2 — MARGO SHUGART-YOUNG, Paul Bains — MOTION TO MODIFY PLAN, 12-7-20 [30]

Final Ruling: No appearance at the January 12, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on December 8, 2020. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Margo Karen Shugart-Young ("Debtor"), has filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response indicating non-opposition on December 16, 2020. Dckt. 38. 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, Margo Karen Shugart-Young ("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 December 7, 2020, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

34. 20-25340-E-13 GEL-1 — DEAN JONES — Gabriel Liberman — MOTION TO VALUE COLLATERAL OF THE GOLDEN 1 CREDIT UNION — 12-7-20 [10]

Final Ruling: No appearance at the January 12, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on December 7, 2020. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of The Golden One Credit Union ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $18,417.00.

The Motion filed by Dean Eric Jones ("Debtor") to value the secured claim of The Golden

One Credit Union ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 12. Debtor is the owner of a 2014 Chevrolet Camaro SS ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $18,417.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Trustee filed a Response stating no opposition to the valuation and noting that Creditor is included in Debtor's plan as a Class 2 (B) claim and has not filed a Proof of Claim to date. Dckt. 16.

Creditor filed Proof of Claim 2-1 on December 18, 2020. Creditor values the Vehicle at 24,705.31. Proof of Claim, ¶ 9.

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on September 14, 2014, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $36,624.81. Proof of Claim, No. 2-1.

While Proof of Claim No. 1 is prima facie evidence of a claim, the Creditor has the actual burden of proof on the claim if that prima facie evidence is rebutted. It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis 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).

> "Inasmuch as Rule 3001(f) and section 502(a) provide that a claim or interest as to which proof is filed is "deemed allowed," the burden of initially going forward with the evidence as to the validity and the amount of the claim is that of the objector to that claim. In short, the allegations of the proof of claim are taken as true. If those allegations set forth all the necessary facts to establish a claim and are not self-contradictory, they *prima facie* establish the claim. Should objection be taken, the objector is then called upon to produce evidence and show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves. But the ultimate burden of persuasion is always on the claimant. Thus, it may be said that the proof of claim is some evidence as to its validity and amount. It is strong enough to carry over a mere formal objection without more."

Wright v. Holm (In re Holm), 931 F.2d 620, 623 (9th Cir. 1991) (quoting 3 L. King, Collier on Bankruptcy § 502.02, at 502-22 (15th ed. 1991)). The presumptive validity of the claim may be overcome by the objecting party only if it offers evidence of equally probative value in rebutting that offered by the proof of claim. *Holm* at 623; *In re Allegheny International, Inc.*, 954 F.2d 167, 173-74 (3rd Cir. 1992). The burden then shifts back to the claimant to produce evidence meeting the objection and establishing the claim. *In re Knize*, 210 B.R. 773, 779 (Bankr. N.D. Ill. 1997).

Proof of Claim No. 2-1 in which it is asserted that the claim is a secured claim in the amount of $24,705.31 is based upon that amount being stated in the Proof of Claim. The Proof of Claim is signed by Sofia Ali, a Bankruptcy Specialist of the Golden One Credit Union. As opposed to the books

and records of Golden One Credit Union in which the amount of the debt and the various transactions are maintained, there is nothing to indicate a high probative value as to the statement of the value of this six model year old 2014 Chevrolet Camaro SS.

Debtor, as the owner of the vehicle, states his opinion as to value, concluding that it is $18,417.00. Declaration, Dckt. 12. As the owner, the 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). While Debtor could have made more of an effort in his testimony to describe the condition of the vehicle, any deferred maintenance, damage, required clean-up, such lack of attention to his testimony does not render it irrelevant or not probative. It is akin to Creditor not bothering to include a KBB or NADA authenticated valuation with the Proof of Claim, which would enhance the probative value to be overcome.

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 $18,417.00, 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 Dean Eric 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 pursuant to 11 U.S.C. § 506(a) is granted, and the claim of The Golden One Credit Union ("Creditor") secured by an asset described as 2014 Chevrolet Camaro SS ("Vehicle") is determined to be a secured claim in the amount of $18,417.00, 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 $18,417.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

35. **20-20880-E-13** **PATRICIA SHIELDS** **MOTION TO MODIFY PLAN**
MEV-2 **Marc Voisenat** **11-23-20 [55]**

CASE DISMISSED: 12/5/20

Final Ruling: No appearance at the January 12, 2021 hearing is required.

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

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

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

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

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

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

36. **20-24790-E-13 DPC-2** **ANTON AXELSSON Michael Hays** **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 12-9-20 [28]**

Final Ruling: No appearance at the January 12, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on December 9, 2020. By the court's calculation, 34 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.

The Objection to Confirmation is overruled as moot.

The Chapter 13 Trustee, David Cusick ("Trustee"), objects to confirmation of the debtor, Anton Mar Axelsson ("Debtor") Chapter 13 plan. Debtor filed a Notice of Conversion on December 30, 2020, however, converting the case to a proceeding under Chapter 7. Dckt. 36. Debtor may convert a Chapter 13 case to a Chapter 7 case at any time. 11 U.S.C. § 1307(a). The right is nearly absolute, and the conversion is automatic and immediate. FED. R. BANKR. P. 1017(f)(3); *In re Bullock*, 41 B.R. 637, 638 (Bankr. E.D. Penn. 1984); *In re McFadden*, 37 B.R. 520, 521 (Bankr. M.D. Penn. 1984). Debtor's case was converted to a proceeding under Chapter 7 by operation of law once the Notice of Conversion was filed on December 30, 2020. *McFadden*, 37 B.R. at 521.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Confirmation 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 is overruled as moot, the case having been converted to one under Chapter 7.

37. **20-25093-E-13 EAT-1** **EILEEN HECHT**
Julius Cherry

OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK NATIONAL ASSOCIATION
11-23-20 [15]

WITHDRAWN BY M.P.

Final Ruling: No appearance at the January 12, 2021 hearing is required.

U.S. Bank National Association, as Trustee for SASCO Mortgage Loan Trust 2006-WF3 ("Creditor"), having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Objection to Confirmation was dismissed without prejudice, the matter is removed from the calendar, and the Chapter 13 Plan filed on November 4, 2020, is confirmed.**

Counsel for the debtor, Eileen Leona Hecht ("Debtor") shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Trustee for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

38. **20-24945-E-13 MJM-12** **JOSHUA DRAVIS** **Seth Hanson** **MOTION TO APPROVE STIPULATION 12-4-20 [17]**

Final Ruling: No appearance at the January 12, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on December 4, 2020. By the court's calculation, 39 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion for Approval of Compromise 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 Approval of Stipulation Between Creditor and Debtor is granted.

Hughes Federal Credit Union ("Creditor") requests that the court approve a stipulation with Joshua James Dravis ("the Chapter 13 Debtor") which provides that the automatic stay terminate immediately with respect to Debtor's 2019 Tesla Model 3 (VIN ending in 1485), and permits Creditor to be able to obtain possession of the subject vehicle, sell the subject vehicle, and provide all notices necessary to sell and dispose of the subject vehicle.

The Trustee has no opposition to the stipulation where Debtor is current in plan payments and Trustee has not disbursed any payments to Creditor. Dckt. 22.

STIPULATION

Creditor and Debtor stipulate to an order regarding the immediate termination of the automatic stay with respect to Debtor's 2019 Tesla Model 3, subject to approval by the court upon the following facts (the full terms of the Stipulation are set forth in the Stipulation filed in support of the Motion, Dckt. 20):

A. The automatic stay is terminated immediately to allow Creditor to exercise its rights under California and Arizona law including obtaining possession of the subject vehicle, selling and disposing of it, applying the proceeds to Debtor's loan, and providing all notices necessary to sell

and dispose of the subject vehicle.

B. Order terminating the stay shall apply to the current trustee, successor trustee, or any trustee if the case is converted.

C. Debtor will cooperate with Creditor so that Creditor can promptly proceed with obtaining possession and selling and disposing of the vehicle.

DISCUSSION

Here, Debtor and Creditor have agreed and have stipulated that the automatic stay be terminated immediately so that Creditor can obtain possession of the vehicle. The Motion to Approve the Stipulation was filed and was set for hearing. A total of 39 days notice was provided with oppositions and responses to be heard at the hearing. The Motion's Certificate of Service provides for all who received notice of this Stipulation.

The Stipulation is based on terminating the automatic stay with respect to Debtor's 2019 Tesla Model 3, and permits Creditor to be able to obtain possession of the subject vehicle, sell the subject vehicle, and provide all notices necessary to sell and dispose of the subject vehicle and apply whatever proceeds to debt owed on the loan.

Debtor obtained the loan for the vehicle on December 2019. Debtor filed for bankruptcy October 2020 and stated his intent to surrender the property. Subsequent to the filing, Debtor and Creditor entered into the Stipulation subject of this motion.

Counsel, Debtor, and Trustee have responsibly addressed these issues, allowed Counsel to participate in the solution, and have presented a Stipulation that allows both Debtor and Creditor to move on.

The Motion is granted.

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

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

The Motion to Approve Stipulation filed by Hughes Federal Credit Union, Creditor ("Movant") having been presented to the court, and upon review of the pleadings, the parties' stipulations, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2019 Tesla Model 3 ("Vehicle"), and applicable nonbankruptcy law to obtain possession of,

nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.