UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

January 26, 2021 at 2:00 p.m.

1.	**21-20002-E-13** **MET-1**	**DOMINIC ACCETTOLA** **Mary Ellen Terranella**	**MOTION TO EXTEND AUTOMATIC STAY AND/OR MOTION TO REINSTATE AUTOMATIC STAY** **1-6-21 [9]**

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 January 6, 2021. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

The Motion to Extend the Automatic Stay is granted.

Dominic John Accettola ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second

bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 19-27204) was dismissed on October 5, 2020, after Debtor became delinquent in plan payments. *See* Order, Bankr. E.D. Cal. No. 19-27204, Dckt. 49, October 5, 2020. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because he fell behind in plan payments due to periodical layoffs at his job last year due to COVID-19 exposure at job sites.

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

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

A. Why was the previous plan filed?

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

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

Debtor has sufficiently demonstrated the case was filed in good faith/rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Extend the Automatic Stay filed by Dominic John Accettola ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes and parties, unless terminated by operation of law or further order of this court.

2.	**20-23610-E-13** **PLG-1**	**MELINDA SHARP** **Rabin Pournazarian**	**OBJECTION TO CLAIM OF JEFFERSON CAPITAL SYSTEMS, LLC, CLAIM NUMBER 1-1** **12-18-20 [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.

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

Sufficient Notice Not Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Debtor, and Chapter 13 Trustee on December 18, 2020. By the court's calculation, 39 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).

Moving party did not provide sufficient notice. At the hearing, xxxxxxx

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 Jefferson Capital Systems, LLC is xxxxxxx.

Melinda Sharp, the Chapter 13 Debtor, ("Objector") requests that the court disallow the claim of Jefferson Capital Systems, LLC ("Creditor"), Proof of Claim No. 1-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $1,200.97. Objector asserts that the Statute of Limitations on the collection of contract claims in California is four years from the date the balance was due under the contract or four years from the date the last payment was made under the contract. Objector states that according to the Proof of Claim, the last transaction date and charge off date was June 29, 2011. The date of last payment on the Statement of Account Information attached to the Proof of Claim states October 22, 2010.

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 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).

California Code of Civil Procedure § 337 states in relevant part:

> 2. An action to recover (1) upon a book account whether consisting of one or more entries; (2) upon an account stated based upon an account in writing, but the acknowledgment of the account stated need not be in writing; (3) a balance due upon a mutual, open and current account, the items of which are in writing; provided, however, that where an account stated is based upon an account of one item, the time shall begin to run from the date of said item, and where an account stated is based upon an account of more than one item, the time shall begin to run from the date of the last item.

The California Legislature made a substantive amendment to California Code of Civil Procedure § 337 in 2018, which became effective January 1, 2019, that moves the expiration of the statute of limitations on a contract action from an affirmative defense to affirmative bar on a creditor seeking to enforce the obligation.

> (d) When the period in which an action must be commenced under this section [contract, instrument, book account, account stated, open account, rescission of a written contract] has run, a person shall not bring suit or initiate an arbitration or other legal proceeding to collect the debt. The period in which an action may be commenced under this section shall only be extended pursuant to Section 360.

Cal. C.C.P. § 337(d).

The Bankruptcy Code provides certain extensions of time for actions a creditor may take when a debtor files for bankruptcy. Specifically, 11 U.S.C. § 108(c) provides:

> Except as provided in section 524 of this title, if **applicable nonbankruptcy law**, an order entered in a nonbankruptcy proceeding, or an agreement **fixes a period for commencing or continuing a civil action** in a court other than a bankruptcy court **on a claim against the debtor**, or against an individual with respect to which such individual is protected under section 1201 or 1301 of this title, and such period has not expired before the date of the filing of the petition, then **such period does not expire until the later of**--
>
> > (1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or

(2) 30 days after notice of the termination or expiration of the stay under section 362, 922, 1201, or 1301 of this title, as the case may be, with respect to such claim.

A review of Proof of Claim No. 1-1 lists the charge off date as June 29, 2011. The court takes judicial notice that a creditor does not "charge off" an account if payments are being made or further credit is being extended. (This basic fundamental point of credit transactions is commonly known by both creditors and consumers alike.)

No payment or other transaction occurred after October 22, 2010. Thus, the four-year statute of limitations expired on or before October 22, 2014.

This bankruptcy case was filed on July 23, 2020 —2,101 days after the latest date the statute of limitations expired. There was no period of time for 11 U.S.C. § 108 to preserve and extend for Creditor.

Based on the evidence before the court, the creditor's claim is disallowed in its entirety due to the statute of limitations expiring prior to the filing of the case. The Objection to the Proof of Claim is sustained.

~~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 Jefferson Capital Systems, LLC ("Creditor") filed in this case by Melinda Sharp, 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 Jefferson Capital Systems, LLC is sustained, and the claim is disallowed in its entirety.~~

~~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.~~

3. **17-25819-E-13 AP-1** **EIRENA OTEYZA** **Timothy Walsh** **MOTION FOR COURT APPROVAL OF PAYMENT DEFERRAL AGREEMENT 12-21-20 [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 Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Chapter 13 Trustee, on December 21, 2020. By the court's calculation, 36 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 the Payment Deferral Agreement is granted.

The Motion to Approve the Payment Deferral Agreement filed by Wells Fargo Bank, N.A. ("Creditor") seeks court approval for Debtor to incur post-petition credit. Creditor, whose claim the Plan provides for in Class 4, has agreed to deferral of four (4) payments to bring the loan current. According to the Agreement, the deferred payments will become due upon the maturity of the loan, or earlier, upon the sale or transfer of the Subject Property, refinance of the Loan, or payoff of the interest-bearing unpaid principal balance on the Loan. Exhibit 1, Dckt. 70.

Trustee filed a Response on January 8, 2021 requesting the court consider that it is unclear if the motion is proper under Local Bankruptcy Rule 3015-1(h)(1) where the motion was filed by the Creditor and there is no indication that Debtor is aware of the motion or that they want the relief sought. Dckt. 72. Trustee asserts that under the local bankruptcy rules Debtor should be the party requesting this relief.

Debtor's counsel filed a pleading titled "Joinder of Debtor" where Debtor "joins" Creditor in seeking approval of the payment deferral agreement asserting that the parties have worked out this agreement for each party's benefit and that Debtor believes that it will relieve some economic pressure and support her efforts to maintain the plan. Dckt. 75. No declaration under penalty of perjury from Debtor is provided in support of the request to approve this agreement. While there exists no rule allowing a person to forcibly join someone else's motion, the court construes the "joinder" to be a statement of Debtor's support of the Motion.

This post-petition financing is consistent with the Chapter 13 Plan in this case and with Debtor's ability to fund that Plan. Debtor having asserted that they are seeking the relief requested, there being no objection from the Chapter 13 Trustee or other parties in interest, and the Motion complying with the provisions of 11 U.S.C. § 364(d), the Motion to Approve the Payment Deferral Agreement 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 the Payment Deferral Agreement filed by Wells Fargo Bank, N.A. ("Creditor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the court authorizes Eirena Merryl Oteyza to amend the terms of the loan with Wells Fargo Bank, N.A. ("Creditor"), which is secured by the real property commonly known as 900 Cambridge Drive 93, Benicia, California, on such terms as stated in the Payment Deferral Agreement filed as Exhibit 1 in support of the Motion (Dckt. 70).

4. **20-25327-E-13 MRL-1** | **ROGER/BRANDY HAYES** **Mikalah Liviakis** | **MOTION TO VALUE COLLATERAL OF CREDIT ACCEPTANCE CORPORATION** **1-7-21 [14]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on January 7, 2021. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of Credit Acceptance Corporation ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $4,500.00.

The Motion filed by Roger Ward Hayes and Brandy Trayshun Hayes ("Debtor") to value the secured claim of Credit Acceptance Corporation ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 16. Debtor is the owner of a 2009 Subaru Outback ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $4,500.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

DISCUSSION

Trustee filed an Opposition on January 12, 2021. Dckt. 18. Trustee opposes on the basis that Creditor is included in the proposed plan as a Class 2 (A) for claims not reduced based on value of collateral with a claimed amount of $2,500 and where Creditor's Proof of Claim 1-1 claims $5,875.00 as

secured and $1,944.52 as unsecured.

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. 1 in which it is asserted that the claim is a secured claim in the amount of $5875.00 is based upon that amount being stated in the Proof of Claim. The Proof of Claim is signed by Alicia Ford, Bankruptcy Coordinator for Credit Acceptance Corporation. As opposed to the records of Credit Acceptance Corporation, Inc. 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 eleven year old model 2009 Subaru Outback.

Debtor, as the owner of the vehicle, states her opinion as to value, concluding that it is $4,500.00. Declaration, Dckt. 16. 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 her testimony to describe the condition of the vehicle, any deferred maintenance, damage, required clean-up, such lack of attention to her 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.

The lien on the Vehicle's title secures a purchase-money loan incurred on February 3, 2018, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $7,819.52. Proof of Claim, No. 1-1. Therefore, Creditor's claim secured by a

lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of $4,500.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Value Collateral and Secured Claim filed by Roger Ward Hayes and Brandy Trayshun Hayes ("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 Credit Acceptance Corporation ("Creditor") secured by an asset described as 2009 Subaru Outback ("Vehicle") is determined to be a secured claim in the amount of $4,500.00, 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 $4,500.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

5. **20-23431-E-13 MJD-3** | **KAREN BLAKLEY** **Matthew DeCaminada** | **MOTION TO VALUE COLLATERAL OF WESTLAKE SERVICES, LLC 12-18-20 [45]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on December 18, 2020. By the court's calculation, 39 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 Westlake Services, LLC ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $10,318.

The Motion filed by Karen Patrice Blakley ("Debtor") to value the secured claim of Westlake Services, LLC ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 47. Debtor is the owner of a 2013 Kia Optima ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $9,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

DISCUSSION

In the Motion Debtor states that no Proof of Claim had been filed as of the date of the instant motion (filed on December 18, 2020). Creditor filed Proof of Claim 9-1 on September 21, 2020. The Proof of Claim includes a Kelley Blue Book valuation of the Vehicle for a Total Wholesale/Retail Value in the amount of $10,318, which includes a list of included equipment and a mileage adjustment for 68,549 miles.

Here, Debtor's Declaration states:

> 1. It is my opinion that the replacement value of the Vehicle was $9,000.00 as of the date I filed my petition.
>
> 2. In making my determination of the value of my Vehicle, I have taken into consideration the age of the vehicle, the wear and tear on the interior, and the wear and tear on the engine and other mechanical parts.
>
> 3. I made my determination as to the value of my Vehicle after reviewing the NADA website which includes a pricing and cost details page showing the annual average depreciation of the Vehicle along with the annual average cost of fuel, maintenance, and repairs.

Declaration, at ¶¶ 2-4. Debtor's Declaration presents mere conclusions, not supported by financial information or factual arguments because no actual description of the vehicle is provided. *In re Austin,* 583 B.R. at p. 483. Moreover, Debtor did not provide a NADA Valuation Report as evidence, but instead provides a link to the 2013 Kia Optima prices and values without any specifics regarding her Vehicle. Additionally, Debtor provides no explanation as to why the value of the vehicle is reduced for ordinary fuel and maintenance costs. Therefore, Debtor did not present substantial evidence to rebut Credit's Proof of Claim.

The lien on the Vehicle's title secures a purchase-money loan incurred on April 2016, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $17,304.81. Proof of Claim, No. 9-1. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of $10,318, 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 Karen Patrice Blakley ("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 Westlake Services, LLC ("Creditor") secured by an asset described as 2013 Kia Optima ("Vehicle") is determined to be a secured claim in the amount of $10,318, 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 $10,318 and is encumbered by a lien securing a claim that exceeds the value of the asset.

6. **19-27838-E-13 PLC-2** **TIAZJANAE WILRIDGE** **Peter Cianchetta** **MOTION TO CONFIRM PLAN 12-18-20 [59]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on December 18, 2020. By the court's calculation, 39 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Plan is denied.

The debtor, Tiazjanae Imani Wilridge ("Debtor") seeks confirmation of the Chapter 13 Plan. The Plan provides for plan payments of $331.00 commencing January 25, 2021, and a zero percent dividend for unsecured claims totaling $31,539.00. Plan, Dckt. 62. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on January 6, 2021. Dckt. 64. Trustee opposes confirmation of the Plan on the basis that Debtor may not have sufficient income to make plan payments.

DISCUSSION

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, it appears Debtor has lost $564 in income since the last Schedule I and J provided to the court. Debtor's declaration in support of the plan states that Debtor is no longer

receiving child support, $355.00, and relies on her family as a financial resource. Although Trustee also notes that Debtor is current in plan payments.

Debtor's financial situation appearing to have changed, Debtor should file amended or supplemental Schedules I and J that reflect her current financial situation.

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

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

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

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

7. **20-25169-E-13 AP-1** **JOSEPH OLHEISER** **Jennifer Lee** **OBJECTION TO CONFIRMATION OF PLAN BY METROPOLITAN LIFE INSURANCE COMPANY** **12-28-20 [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, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on December 28, 2020. By the court's calculation, 29 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

Metropolitan Life Insurance Company ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that Debtor fails to provide for the curing of pre-petition arrearage in the amount of $9,933.70.

DISCUSSION

Creditor's objections are well-taken.

Failure to Cure Arrearage of Creditor

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts $13,907.64 in pre-petition arrearages. The Plan does not propose to cure those arrearages. Instead, the plan classifies Creditor's claim as a Class 4 claim to be

paid directly by Debtor, where these claims mature after the completion of the plan and are not in default.

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

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by Metropolitan Life Insurance Company ("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.

8. **16-27697-E-13** **BRIAN OKAMOTO** **MOTION TO MODIFY PLAN**
PGM-8 **Peter Macaluso** **12-9-20 [183]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on December 10, 2020. By the court's calculation, 47 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is xxxxx.

The debtor, Brian Mitchell Okamoto ("Debtor") seeks confirmation of the Modified Plan to account for changes in circumstances, namely that Debtor's gross income has been reduced, he had to help his son move back home after losing his job due to COVID-19, and expenses related to COVID-19 to update computers to be able to support working from home and educational needs. Declaration, Dckt. 185. The Modified Plan provides payments of $3,790.00 commencing December 2020 for 36 months, and a zero percent dividend to unsecured claims totaling $55,250.19. Modified Plan, Dckt. 187. 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 January 11, 2021. Dckt. 193. 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 $1,825.00 delinquent in plan payments, which represents a fraction of one month of the $3,790.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Debtor filed a Reply informing the court that after filing this proposed plan Debtor received a trial loan modification and will soon be filing a new modified plan and a motion to approve the trial loan modification. Dckt. 196.

The Reply did not address at the hearing whether it would be possible to amend the current proposed Modified Plan, or a new plan will be required.

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, Brian Mitchell Okamoto ("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.~~

9. 19-21277-E-13 JASON/TIFFANIE RUPCHOCK MOTION TO MODIFY PLAN
PLC-10 Peter Cianchetta 12-18-20 [132]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 18, 2020. By the court's calculation, 39 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is denied.

The debtors, Jason Peter Rupchock and Tiffanie Ann Rupchock ("Debtor") seek confirmation of the Modified Plan to account for the change in income and expenses due to husband working for a new company and surrender of the Harley Davidson. Declaration, Dckt. 135. The Modified Plan provides for $970.00 commencing December 25, 2020, and a 65 percent dividend to unsecured claims totaling $72,534.96. Modified Plan, Dckt. 134. 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 January 11, 2021. Dckt. 137. Trustee opposes confirmation of the Plan on the basis that:

A. Plan is exceeds the maximum amount of time allowed under the Bankruptcy Code.

B. Debtor has not filed supplemental Schedules to account for recent

changes in income and expenses.

C. Class 4 vehicle is not included in the proposed plan.

D. Section 3.05 for the Attorney's fees is incorrect.

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 75 months due to $71,714.79 being required to pay for Trustee's fees and creditors but the plan will only pay $58,806.79. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

Supplemental Schedules

Trustee argues that Debtor has failed to file Supplemental Schedules I and J in support of his current income and expenses. Debtor's declaration indicates that Debtor has a new job and a current average monthly income of $8,237.08, with monthly expenses of $7,266.00, leaving a net disposable income of $971.08. Yet, Debtor has failed to explain the changes in income and expenses or Debtor's new job over the one listed on their prior schedules. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Debtor filed a "Janus-faced Amended/Supplemental Schedules I and J on January 18, 2021. Dckt. 140. The court says "Janus-faced" because Debtor states under penalty of perjury that the Schedules are both amended, with the changes backward looking, dating back to the filing of this case, and supplemental, with the same changes being forward looking, effective only from a post-petition date.

The Amended/Supplemental Schedule I lists Debtor Jason's new job as a Service Advisor with Hi Tech Auto Care stating that he has been employed there for six (6) months. *Id.*, at p. 1. This is the same employer listed in the prior Supplemental Schedule (Dckt. 125) as having been employed for 1.5 months. According to the Schedule, Debtor Jason's monthly gross income is now $4,100, where prior Schedule indicated $4,550.

FN. 1.

Janus-faced
Definition of Janus-faced
: having two contrasting aspects
especially : DUPLICITOUS, TWO-FACED

Synonyms

artificial, backhanded, counterfeit, double, double-dealing, double-faced, fake, feigned, hypocritical, insincere, jive [slang], left-handed, lip, mealy, mealymouthed, Pecksniffian, phony (also phoney), phony-baloney (or phoney-baloney), pretended, two-faced, unctuous

Antonyms

artless, candid, genuine, heartfelt, honest, sincere, undesigning, unfeigned

https://www.merriam-webster.com/dictionary/Janus-faced

In the Amended/Supplemental Schedule J, Debtor lists increases in several expenses including: utilities, transportation, and charitable contributions; and decreases in personal care products, medical and dental expenses, and car payment. Dckt. 140, at p.4. The prior schedule listed monthly expenses of $7,279.33, with the Supplemental Schedule now listing $7,266.00. *See* Dckt. 125.

Class 4 Vehicle

According to Trustee, the proposed plan fails to list a 2017 Toyota Camry under Class 4 which Debtor obtained approval to purchase in June 2020. Trustee notes that Debtor's prior Supplemental Schedule budgets for this payment but the plan fails to include it. A review of Debtor's Supplemental Schedules filed on January 18, 2021 shows that Debtor accounts for that payment as an expense.

The vehicle payment not being listed in the proposed plan, Debtor's plan does not comply with 11 U.S.C. § 1325(a)(1).

Attorney's Fees

According to Trustee Debtor's proposed Plan indicates that Debtor has paid $0.00 to their attorney. The order confirming the prior plan and the Debtor's Rights and Responsibilities indicate that $120.00 was paid prior to the filing of the case, and $3,880 was to be paid through the plan. Trustee does not oppose correcting this in the order confirming the plan.

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 debtors, Jason Peter Rupchock and Tiffanie Ann Rupchock ("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. **20-23106-E-13 PGM-1** **10 thru 11**

KELVIN PICKETT
Peter Macaluso

CONTINUED 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 xxxx.

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).

At the hearing, Debtor's counsel reported that the Debtor is down one payment and requested that the matter be continued. The Trustee concurred.

January 26, 2021 Hearing

Nothing further has been filed by Debtor or the Trustee as of the court's January 23, 2021 review of the Docket. At the hearing, xxxxxxxx

11. **20-23106-E-13 DPC-2** **KELVIN PICKETT** **Peter Macaluso** **CONTINUED MOTION TO DISMISS CASE** **10-20-20 [26]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on October 20, 2020. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

The Motion to Dismiss is xxxx.

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Kelvin Quentin Pickett ("Debtor"), is delinquent in plan payments and has failed to file an amended plan.

DEBTOR'S OPPOSITION

On November 3, 2020, Debtor filed an Opposition stating that a new plan will be filed prior to this hearing. Dckt. 31.

DISCUSSION

Delinquent

Debtor is $4,080.00 delinquent in plan payments, which represents multiple months of the $2,040.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Prior Plan Denied, New Plan and Motion Filed

Debtor filed a First Amended Plan on November 11, 2020. Dckt. 42. The Amended Plan provides for Debtor to have made a total of $2,040 for the first four months of the Plan - only $500 a month - and then $2,107 for the remaining 56 months of the Plan. Plan, Add. Prov., p. 7; Dckt. 42.

The Motion to Confirm states with particularity grounds upon which confirmation is

requested. Dckt. 38. The Motion states that all of Debtor's assets are exempt.

Debtor provides his Declaration in support of the Motion to Confirm the Amended Plan. Dckt. 40. Debtor's testimony does not include any testimony as to why for the first four months of the Plan the Debtor pays a discounted amount of $500 a month and where the $6,000 ($1,500 a month) were diverted during the first four months of the Plan.

On Supplemental Schedule I filed on November 12, 2020, Debtor states that he is unemployed and has income of $2,910.00 a month. Dckt. 36 at 4-5. The sources of this income are stated to be:

Rental of Property/Business	$ 300	
"state sec asst"	$1,440	
Daughter	$ 300	(Not on Original Schedule I)
Brother	$ 600	(Not on Original Schedule I)
"side jobs"	$ 270	(Not on Original Schedule I)

The Declaration of Ronald Pickett has been filed in support of the Motion to Confirm. In it, Ronald Picket testifies that he has $4,000 a month in net income, but expenses of only $400 a month. Dckt. 34. Ronald Picket offers no testimony as to how an adult person in the 21st Century can only have $400 a month in expenses. Given that this declaration necessarily had to be carefully crafted by Debtor's counsel and represents the best testimony that Ronald Pickett can provide, it falls woefully short of being credible.

The second Declaration is provided by Igauna Pickett, Debtor's daughter, an adult that Debtor lists as a dependent. Dckt. 35. She testifies that her net income is approximately $800 a month, and she has expenses of only $150 a month. As with the Debtor's brother, Igauna Pickett offers no testimony as to how an adult in the 21st Century can have only $150 a month in expenses. Again, given that this declaration necessarily had to be carefully crafted by Debtor's counsel and represents the best testimony that Igauna Pickett can provide, it falls woefully short of being credible.

Debtor also states that for the remaining 56 months of the Plan, he will generate $270 a month of net income from "side jobs." In his Declaration, Debtor provides conflicting testimony, stating that he has a part-time job in which his income is actually $660 a month - 144.44% more than stated under penalty of perjury on Supplemental Schedule I.

On Supplemental Schedule J Debtor lists having two adult children who are "dependents." Debtor does not explain why these two adults are "dependents." On Supplemental Schedule C, Debtor states under penalty of perjury that his food and housekeeping supplies expense for his family unit of three adults is only $180.00 a month. Dckt. 36 at 7. This is highly unlikely.

For the five years of the Plan, Debtor and his two adult dependents will have expenses for Personal Care Products and Services of only $10 a month, clothing and dry cleaning of only $10 a month, medical of only $3 a month, entertainment/recreation of $0.00, transportation of only $60, and vehicle insurance $170. For these three adults, Debtor states under penalty of perjury that their monthly expenses are only $740. *Id*. Debtor's Declaration provides no testimony as to how these three adults - Debtor and his two dependent adult children - actually exist on only $740 a month.

On his Statement of Financial Affairs Debtor states that he is married. Dckt. 1 at 32. No information is provided about this spouse or the spouse's income. Debtor states in response to Question 4 of the Statement of Financial Affairs that Debtor has not wage, employment, or business income for 2020, 2019, or 2018. *Id*.32.

In response to Question 5 of the Statement of Financial Affairs, Debtor states having the following income from other sources:

2020 YTD

SSA.....$7,250

Rent For Non-Debtor Spouse.....$2,250

2019

SSA.....$17,400

2018

SSA.....$ 1,700

Id. at 33. There is no part-time employment or "side jobs" history of income for the Debtor.

While filing an Amended Plan and Motion to Confirm, it appears that there are substantial deficiencies which counsel knows must be addressed as part of a motion to confirm a plan. There appears to be little reason to just "kick the plan down the road," have the Trustee state opposition to confirmation based on these easily identifiable deficiencies, Debtor then being "surprised" and request a continuance for further delay, and the court allowing the Debtor to delay the prosecution of this case a further ninety days.

The court ordered the case continued to allow Debtor to address the evidentiary and financial issues. While cause exists to dismiss this case, the "corrective effect" of making Debtor and counsel file a new case would result in a financial loss in excess of any "corrective benefit." The court continues this to allow Debtor and counsel a final, final chance to present credible evidence to the court and prosecute the case in good faith.

January 26, 2020 Hearing

As of the January 23, 2021 court preparation of this tentative ruling, no other supplemental pleadings or documents have been filed.

At the hearing, xxxxxxxx

12. **19-25324-E-13 PGM-3** | **BETHANY SANDERS-JOHNSON** | **Peter Macaluso** | **CONTINUED 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 xxxx.

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, Debtor's counsel reported that a little more time is needed for the Trustee to review the new information. The Trustee concurred in the request for a continuance.

January 26, 2020 Hearing

Debtor filed "Janus-faced" [Fn.1.] Amended/Supplemental Schedules I and J and the Declaration of Bethany Sanders-Johnson in support of the Amended Schedules on January 20, 2020. Dckts. 101, 102. The court says "Janus-faced" because Debtor states under penalty of perjury that the Schedules are both amended, with the changes backward looking, dating back to the filing of this case, and supplemental, with the same changes being forward looking, effective only from a post-petition date.

FN. 1.

Janus-faced
Definition of Janus-faced
: having two contrasting aspects
especially : DUPLICITOUS, TWO-FACED

Synonyms

artificial, backhanded, counterfeit, double, double-dealing, double-faced, fake, feigned, hypocritical, insincere, jive [slang], left-handed, lip, mealy, mealymouthed, Pecksniffian, phony (also phoney), phony-baloney (or phoney-baloney), pretended, two-faced, unctuous

Antonyms

artless, candid, genuine, heartfelt, honest, sincere, undesigning, unfeigned

https://www.merriam-webster.com/dictionary/Janus-faced

The court has repeatedly addressed with counsel, his other clients, and, through counsel, his office staff that embrace a "check every box possible and let the judge figure it out" strategy. Though repeatedly addressed, the present Amended/Supplemental Schedules I and J demonstrate that counsel's client, counsel, and his staff intentionally chose not to comply with the law and continue to file Janus-faced, "*whatever*," pleadings.

Debtor stating under penalty of perjury that the changes relate all the way back to the filing of this case, and also are effective at a post-petition date in 2021 demonstrates either an intentional false statements under penalty of perjury or an incompetence to provide testimony under penalty of perjury.

Debtor also provides her Declaration (Dckt. 102) in support of the present Motion. Debtor testifies under penalty of perjury that during the COVID lockdown her job as a dental assistant was terminated as non-essential, she completed her education, and she found employment as a nurse at Nightgale's List, which is a contract agency for traveling nurses. Declaration, ¶¶ 2,3; Dckt. 102. She works six days a week with COVID-19 patients. *Id.*, ¶ 3. Debtor also explains that due to this job her expenses have increased as she is required to travel long distances and stay overnight; she is also not provided with meals and sometimes she has to pay for those. *Id.*

Debtor then goes to explain the changes in her expenses, specifically the increases in home

maintenance, utilities (electricity and internet), food, education, personal care, gas, entertainment and vehicle costs. *Id.*, ¶ 3.

A review of Debtor's Amended Schedule I now accounts for Debtor's new income as a nurse, with a gross monthly income in the amount of $9,533.33, with a total monthly take home pay of $8,229.39 after accounting for payroll deductions. Dckt. 101, Schedule I, at p. 5. Debtor's Amended Schedule J reflects increases for home maintenance, utilities, food and housekeeping supplies, childcare and children's education costs, clothing, personal care products, transportation, entertainment, vehicle insurance, and other (travel costs in support of COVID-19 overtime). *Id.*, Schedule J, at p. 7. The Amended/Supplemental states a total of monthly expenses in the amount of $5,078.95, where the original Schedule J filed in August of 2019 stated a total in monthly expenses of $1,459.81. *Id.*; *see also* Dckt. 1.

Beginning with Amended/Supplemental Schedule I, Debtor shows that her dedication and hard work have paid off, and she is now employed by Nightingale's List, with monthly wages or salary of $9,533.33 a month - which is $114,399.96 a year. Well in excess of her income, which included family support and Lyft driving. [Fn.2.]

FN. 2. It is not clear whether Nightingale's List is an employer or a job placement service, temporary staffing agency, or both.

From the $114,399.96 annual income, Debtor has a monthly withholding of $1,303.94 for her federal and state income taxes and Social Security taxes. That leaves $8,229.39 in take home income. Dckt. 101. Amended/Supplemental Schedule I does not include the $1,929.42 listed on the original Schedule I for alimony, spousal support, maintenance received (family and friends support being listed on line 8h). Dckt. 1 at 33. On Amended/Supplemental Schedule J Debtor lists having five minor children dependents (one having turned 18 during this case, with the youngest two now 3 years old). Even with her new income, it would be surprising that the children's father(s) would automatically have his/their support obligations terminated.

At the hearing, Debtor's counsel **xxxxxxx**

Debtor does show on Amended/Supplemental Schedule J the increases in non-mortgage, property taxes, property insurance (which are provided for in the Plan) expenses. Dckt. 101 at 6-7. With respect to some of the substantial increases, Debtor's conclusion that "this is what they are" or her explanation that they are immediately obviously "reasonable."

Debtor states that she has increased her phone/internet from ($100) a month to ($450) due to "upgrading" her internet that costs an additional ($350) a month. This increase is stated to be due to "home schooling." A ($350) a month increase for an upgrade to an existing service seems high.

Debtor states that her monthly food billing has increased from ($500) a month to ($1,700) a month due to home schooling and Debtor having to travel for job and having to pay for her own food while traveling. Looking at the original Schedule J, it does not appear reasonable that Debtor and her five dependants had a monthly food and housekeeping supplies expense of only ($500) a month.

Deducting ($100) a month for housekeeping supplies for six persons, a ($400) food budget would have been only ($0.74) per person per meal in a thirty-day month. Such does not appear credible, and such "expense" was either a "creative" number to make the plan "work," or Debtor had additional income for that expense.

The expense now jumps to $1,700 a month, a 240% increase. While stating that she has to pay for her meals while traveling, Debtor had to pay for her meals while being at home. There may be an increase due to having some meals at restaurants, it is not clear that Debtor is not being reimbursed for meals or Debtor is incurring reasonable "dining out" expense. If the ($500) food and household supplies expense was real, then it is not clear that a 240% increase is real.

Debtor doubles the "personal care" expense from ($150) a month to ($500) a month. Her explanation is that this is due to COVID-19 orders requiring her and her family to stay at home. It is unclear how staying at home causes a 100% increase in personal care expenses. The news reports have repeatedly reported how many personal care providers (such as hair, manicuring, and the like) have been shut down or out of business, and people have not been using such services.

At the hearing, **xxxxxxx**

13. **20-23896-E-13 HDP-3** **13 thru 14** | **MILTON PEREZ** **Mary Ellen Terranella** | **AMENDED MOTION TO DISMISS CASE** **12-28-20 [59]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on December 4, 2020. By the court's calculation, 53 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, Milton Raul Perez ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for payments of $1,600.00 for 36 months, and a 100 percent dividend to unsecured claims totaling $5,894.00. Amended Plan, Dckt. 49. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CREDITOR'S OPPOSITION

1 Oak Ventures Step Fund LLC ("Creditor"), holding a secured claim, filed an Opposition on December 28, 2020. Dckt. 55. Creditor opposes confirmation of the Plan on the basis that the plan does not provide for full payment of Creditor's pre-petition arrearage.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on January 12, 2021. Dckt. 61. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor fails to explain why the plan proposes refinance within 12

months of the order confirming the plan.

B. Debtor misclassifies a creditor with a secured claim as a Class 4 where Creditor has filed a proof of claim claiming Debtor is in default.

Debtor filed a Reply addressing Trustee's Opposition. Dckt. 66. The Reply is discussed below.

DISCUSSION

Failure to Cure Arrearage of Creditor and Proposed Refinance Procedure

Creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts $128,194.64 in pre-petition arrearage.

Creditor argues that the Plan does not propose to cure those arrearage in their entirety and does not offer to pay the arrears in equal monthly installments. According to Creditor, Debtor's Amended Plan proposes to pay an "arrearage dividend" of $595.99 monthly along with an adequate protection payment of $815.86 together with a proposal to refinance to pay off Creditor in full within 12 months of confirmation.

In the Amended Plan, Debtor puts this Creditor in both Class 1, as if Debtor is paying the claim as a Class 1 Claim, but also providing for it in the Additional Provisions. Plan, § 3.07 and Additional Provisions; Dckt. 49.

Debtor seeks to make an adequate protection payment of $815.86, which is identified as the currently monthly mortgage installment, and the arrearage and Creditor's claim accelerated and paid in full within 12 months.

Refinance Procedure

Trustee objects to confirmation on the basis that Debtor's plan proposes a refinance within 12 months of the order confirming the plan and provides evidence that Debtor may qualify for such refinancing but fails to explain why the plan proposes potentially to wait up to 12 months for the refinance and not sooner.

In the Reply, Debtor does not expect the refinance to take this long but argues that the potential wait of up to 12 months was stated in abundance of caution allowing for the current pandemic conditions that may affect the process from appraisal taking longer, underwriting professionals working from home, and loan approval taking longer due to current low mortgage rates and increases in demand.

Addressing Creditor's Secured Claim

In looking at the Plan in this case, Debtor's only "problem" is addressing Creditor's claim. Debtor states that the obligation due PHH Mortgage Services is current and there are only ($5,894) that will be paid a 100% dividend through this thirty-six month plan. Debtor is also using the Plan to reduce the claim secured by a 2007 Yamaha Dirt Bike from ($2,211) to ($365), which would appear to add

around $1,900 to general unsecured claims. Plan, Dckt. 49.

The monthly plan payment is $1,600. *Id*., ¶ 2.01. From that, the necessary payments during the first year would be:

Plan Payment	$1,600
Chapter 13 Trustee Fee (10%)	($ 160)
Debtor's Counsel Fees ($3,000) Amortized Over 12 Months	($ 250)
Creditor Current Monthly Payment	($815)
Class 2 Dirt Bike Payment	($365)
Surplus Plan Payments Before Beginning Unsecured Claim Dividend	$ 10

During the first year of the Plan there would be an "extra" $10 a month that could go to accelerating the claim of Creditor and reducing the amount of the refinance, but it would only be a very modest amount.

Class 4 Misclassification

Trustee further objects on the basis that creditor PHH Mortgage Corporation holding the first mortgage for Debtor's residence has filed a proof of claim stating that the Debtor is delinquent $6,715.47, showing no payment for May, June, July 2020, or August 2020, as well as accrued fees from the prior bankruptcy, accrued interest from August 1, 2020 to August 11, 2020, as well as a projected escrow shortage.

In the Reply, Debtor explains that PHH Mortgage was classified as a Class 4 claim because Debtor made the pre-petition payments in August of 2020 but that PHH Mortgage has not amended its proof of claim to reflect the payments made. Debtor further asserts that counsel has communicated with PHH Mortgage to ascertain whether a further amended claim will be filed but has not received a response and that Debtor may have to file an objection to the claim if it is not amended.

It is unclear whether Creditor is adverse to any reasonable time period for Debtor to either "put up or shut up" on getting a refinance done, or that Creditor is opposed to locking Debtor into a reasonable time line to have Creditor being repaid.

Looking at Proof of Claim 5-1 filed by Creditor, it acquired the claim from Westwood Associates. The Proof of Claim states that the Property securing the Claim has a value of $450,000. Proof of Claim 5-1, ¶ 9. The interest rate on the secured claim is stated in Proof of Claim 5-1 to be 11.5%, which is 283% higher than the current 30 year residential loan interest rate of 3% available for good residential borrowers.

It appears that the claim of U.S. Bank, N.A. is secured by the senior deed of trust recorded

against the Property is in the amount of ($87,757.22), less any payments made on that amount. Proof of Claim No. 2-1. The court says "appears" in that the deeds of trust attached to Claim No. 2-1 and Creditor's Claim 5-1 are recorded on the same day at the same time in 2007, but the Document Recording Number for Creditor's deed of trust is one number higher than that for the deed of trust attached to Proof of Claim 2-1.

The $450,000 value stated by Creditor is consistent with the $450,000 value stated by Debtor on Schedule A/B. Dckt. 1 at 11.

With a value of $450,000 and a senior secured debt of ($87,757.22), there is projected to be $362,242.78 in value securing Creditor's stated claim of ($215,350.41), Proof of Claim 5-1, providing an equity cushion of $147,000 (63.8% equity cushion). Even taking into account costs of foreclosure, taking possession of property, and post-foreclosure resale costs, there is significant adequate protection for Creditor to be considered for a diligent, good faith refinance effort. [Fn.1.] If the Debtor were to sell the Property for $450,000, after costs of sale (estimated at 8%) and paying the secured claims, Debtor would pocket around $110,000, and have no other significant debt to pay.

FN. 1. On Schedule D, Debtor lists Creditor as having a secured claim of ($120,755). Dckt. 1 at 20. No objection to Proof of Claim 5-1 has been filed by Debtor, indicating that there may have been an error by Debtor in computing Creditor's claim.

Debtor commenced this case on August 11, 2020. Interest rates for residential real estate mortgages are at historically low - at least when one considers the 20th and 21st Centuries - rates. If Debtor can refinance, then now is the time. If Debtor cannot refinance, then he has the "hard" decision to make of whether he wants to sell with real property at historically high values (fueled in part by the historically low interest rates) and maximize his exemption recovery and any surplus, or delay, have interest rates rise and the value of the Property drop as he tries to sell it with a foreclosure sale pending outside of bankruptcy.

At the hearing, **xxxxxxx**

~~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, Milton Raul Perez ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Confirm the Amended Plan is xxxxx.

14.	**20-23896-E-13** **MET-3**	**MILTON PEREZ** **Mary Ellen Terranella**	**MOTION TO CONFIRM PLAN** **12-4-20 [47]**

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

Local Rule 9014-1(f)(1) Motion—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, and Office of the United States Trustee on December 28, 2020. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

The Motion to Dismiss is xxxxx.

1 Oak Ventures Step Fund LLC ("Creditor"), seeks dismissal of the case on the basis that the debtor, Milton Raul Perez ("Debtor"), does not provide for full payment of Creditor's pre-petition arrearage.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on January 12, 2021. Dckt. 64. Debtor contends that the proposed amended plan provides for a refinance of Creditor's claim, which will pay it in full. *Id.*, at 2. Additionally, Debtor asserts that there is significant equity to support the refinance of the second mortgage where Debtor's residence is valued at $450,000 and the first mortgage has a balance of $89,344.00. *Id.*

DISCUSSION

Failure to Cure Arrearage of Creditor

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts $128,194.64 in pre-petition arrearage.

Creditor argues that the Plan does not propose to cure those arrearage in their entirety and

does not offer to pay the arrears in equal monthly installments. According to Creditor, Debtor's Amended Plan proposes to pay an "arrearage dividend" of $595.99 monthly along with an adequate protection payment of $815.86 together with a proposal to refinance to pay off Creditor in full within 12 months of confirmation. Creditor does not consent to these terms.

The court has addressed Debtor's prosecution of this case in the Civil Minutes for the hearing on Debtor's Motion to Confirm the Amended Plan (DCN: MET-3).

At the hearing **xxxxxxx**

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss the Chapter 13 case filed by 1 Oak Ventures Step Fund LLC ("Creditor"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Dismiss is xxxxx.

15. 20-24311-E-13 JASON DIVEN **MOTION TO CONFIRM PLAN**
Daniel Griffin **12-17-20 [47]**

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

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

Sufficient Notice Not 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 December 17, 2020. By the court's calculation, 40 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

Moving party failed to serve several creditors with secured claims, namely SunTrust Bank (now Truist Bank Support Services), Portfolio Recovery Associates LLC, FreedomRoad Financial c/o Wayfinder BK, LLC, Jack Duran, and American Honda Finance.

At the hearing, xxxxxxxx

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 xxxx.

The debtor, Jason Diven ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for 36 payments of $1,000.00 per month and $1,773.30 for 24 payments starting September 25, 2020, and a 21 percent to unsecured claims totaling $85,428.00. 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 January 18, 2021. Dckt. 56. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor may be delinquent in plan payments.

B. Plan may not be feasible.

C. Debtor's plan fails the liquidation test.

DISCUSSION

Delinquency

The Chapter 13 Trustee asserts that Debtor is $1,000.00 delinquent in plan payments. Trustee asserts receiving a $1,000 payment in November 2020 and $1,000 in December 2020 where $3,000 have come due. Additionally, according to Trustee, Trustee received $3,684.38 in funds from the Farm Service Agency that Debtor's Counsel has indicated is a "Cares Act for Farms grant." However, Trustee is uncertain what Debtor wants done with the $3,684.38 payment, and the funds may be subject to exemption. If not exempt, the Trustee argues, then the funds should be paid into the plan. Trustee has put th funds on hold until this matter is resolved.

Debtor filed a Response on January 18, 2020. Dckt. 63. Debtor requests that Trustee apply the CARES Act monies to Debtor's plan as an additional plan payment which Debtor contends should resolve the shortfall in the plan payment for the Trustee's fee in the first 36 months.

Feasibility

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 the plan will take approximately 74 months to complete because the federal tax refunds that should go into the plan will be intercepted by Creditor USDA Farm Service Agency until the debt is satisfied.

Additionally, Trustee asserts that the first 36 months of payments is insufficient to pay Class 3 creditors, administration fees, and Trustee's fees. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Debtor asserts that Creditor USDA Farm Service Agency filed its proof of claim which states that the debt owed is $23,015, rather than the scheduled $30,896 and Debtor has amended the schedules to account for this lower balance. Debtor requests that the order confirming the plan incorporate this new amount and the 2.625% contractual interest rate.

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 Trustee has received what appears to be a CARES Act payment in the amount of $3,684.48 that were not identified on Schedule B as an asset of the estate. Debtor addresses this point, requesting that it be paid into the Plan.

Further, Trustee has filed an objection to Debtor's claim for exemption for a personal injury claim Trustee believes is a contract claim, and an exemption for building materials, which the Trustee believes is for the Debtor's rental property and not residence.

In a single pleading filed as a joint response to the Trustee's Opposition to the Motion and the Objection Exemption (Dckt. 63) that Debtor has filed an Amended Schedule C which does not claim the exemptions that are the subject of the Trustee's Objection. See Amended Schedule C, Dckt. 61 at 10-11.

On Amended Schedule C Debtor no lower claims the exemption in the $95,000 payment due from the sale of his contracting business. That claim continues to be listed on Amended Scheduled A/B. Dckt. 61 at 6.

However, on Amended Schedule C Debtor continues to claim an exemption of $2,986 pursuant to California Code of Civil Procedure § 704.030 for the assets described as "Building Materials for remodeling of Eagleville house." *Id*. at 11. This assets is listed in ¶ 53 of Amended Schedule A/B. *Id*. at 8, 9. All of the materials are given a value of $2,986.00 on Amended Schedule A/B.

The Trustee's objection to the claim of exemption is that at the Meeting of Creditors Debtor testified that he is remodeling apartments in Cedarville and the Trustee is uncertain that these building materials are for Debtor's residence.

At the hearing, **xxxxxxx**

~~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, Jason Diven ("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.~~

16. 20-20715-E-13 AF-3 | **FOUAD MIZYED**
Arasto Farsad | **OBJECTION TO CLAIM OF U.S. BANK, NATIONAL ASSOCIATION, CLAIM NUMBER 9**
12-22-20 [54]

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

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

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

Sufficient Notice Not Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 22, 2020. By the court's calculation, 35 days' notice was provided. 30 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(2).

Moving party failed to serve creditors Wells Fargo Bank, National Association, as Trustee for Structured Adjustable Rate Mortgage Loan Trust, Mortgage PassThrough Certificates, Series 2007-4, and Synchrony Bank, each of which have requested special notice in this case (Dckts. 13, 14).

More significantly, it does not appear that Debtor has served U.S. Bank, N.A., the creditor whose claim is the subject of the Objection, with the Objection to Claim. Debtor's Certificate of Service states that the following persons were served with the Objection:

> Jana Logan, Esq.
> Kirby & McGuinn, A.P.C.
> 707 Broadway, Suite 1750
> San Diego, CA 92101-5395
>
> Diane Weifenbach
> Law Offices of Diane Weifenbach
> 5120 E. La Palma Avenue, #209
> Anaheim, CA 92807-2091
>
> "And All CM/ECF registered participants"
> [without identifying who Debtor thinks has been served electronically]

Ms. Weifenbach did sign Amended Proof of Claim 9-2 that was filed on April 24, 2020, but there is nothing to show that Ms. Weifenbach is the agent for service of Process for U.S. Bank, N.A. This Objection must be served on the party against whom the relief is requested in the same manner as that of a summons and complaint. Fed. R. Bankr. P. 3007(a)(2)(A)(ii) ["(ii) if the objection is to a claim

of an insured depository institution, in the manner provided by Rule 7004(h)"], 7004; Fed. R. Civ. P. 4. For federally insured financial institutions, the Supreme Court has provided specific requirements in Federal Rule of Bankruptcy Procedure 7004(h) [emphasis added], requiring it to be sent by certified mail, stating:

> (h) Service of process on an insured depository institution. Service on an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act) in a contested matter or adversary proceeding **shall be made by certified mail addressed to an officer of the institution** unless—
>
> > (1) the institution has appeared by its attorney, in which case the attorney shall be served by first class mail;
> >
> > (2) the court orders otherwise after service upon the institution by certified mail of notice of an application to permit service on the institution by first class mail sent to an officer of the institution designated by the institution; or
> >
> > (3) the institution has waived in writing its entitlement to service by certified mail by designating an officer to receive service.

Here, U.S. Bank, N.A., as Legal Title Trustee for Truman 2016 SC6 Title Trust has not been served with the pleading seeking relief requested against it. Not being afforded the Due Process notice that relief was being requested against it, the court does not have in personam jurisdiction to alter the rights of U.S. Bank, N.A.

The Objection to Claim was properly set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, ----------.

The Objection to Proof of Claim Number 9-2 of U.S. Bank, National Association as Legal Title Trustee for Truman 2016 SC6 Title Trust is sustained, and the claim is overruled without prejudice.

Fouad Afif Mizyed, the Chapter 13 Debtor ("Objector") requests that the court disallow the claim of U.S. Bank, National Association as Legal Title Trustee for Truman 2016 SC6 Title Trust ("Creditor"), Proof of Claim No. 9-2 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of $458,332.30. Objector asserts that Creditor's claim should be disallowed or reduced to $23,151.06 as it includes foreclosure costs and fees for a non-judicial foreclosure that was wrongfully initiated.

DISCUSSION

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

Debtor argues that the claim should not be allowed or at the very least reduced because the Creditor negligently and erroneously started a new non-judicial foreclosure in July of 2019 which included a demand for $20,000.00-even though they received and deposited $20,000.00 in May of 2019. Debtor further alleges that Creditor acknowledged their error by rescinding the Notice of Default and Trustee's Sale, but only did so after being sued by the Debtor. Thus, the fees and costs for this foreclosure should not be included in the current proof of claim.

Though it is asserted that Creditor accepted the payment that made Debtor current and yet it moved forward with a foreclosure that later rescinded because Creditor knew it was an improper course of action. Yet, Creditor has filed a proof of claim that includes $4,238.99 in foreclosure attorney's fees.

Unfortunately, Creditor not having been served with the Objection to Claim, the court cannot purport to adjudicate this dispute to reduce Creditor's asserted rights. [Fn.1.]

FN. 1. In addition to failing to serve Creditor, the Objection also caught the court's eye in that it seeks not only disallowing the $4,238.99 of the disputed foreclosure fees, but that the court should just disallow the entire $458,332.30 claim because there is $4,238.99 in disputed foreclosure fees. There is no clearly stated grounds or legal authorities for granting the relief requested that the entire $458,332.30 claim be disallowed. Rule governing filing of pleadings and requesting relief required that both the party requesting relief and counsel certify that: (1) the pleading is not being presented for any improper purpose, (2) that the claims, defenses, and other legal contentions are warranted by existing law or by nonfrivolus argument for the extension, modification, or reversal of existing law; and (3) allegations and other factual contentions have evidentiary support. *See*, for example, Federal Rule of Bankruptcy Procedure 9011 and Federal Rule of Civil Procedure 11.

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 U.S. Bank, National Association as Legal

Title Trustee for Truman 2016 SC6 Title Trust ("Creditor"), filed in this case by Fouad Afif Mizyed, the Chapter 13 Debtor, ("Objector") having been presented to the court, Creditor not having been served with the Objection, 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 9-2 of Creditor is overruled without prejudice.

17. 19-21435-E-13 PGM-2 | **HORTENCIA NUNEZ** | **Peter Macaluso** | **MOTION TO MODIFY PLAN** | **12-10-20 [73]**

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 10, 2020. By the court's calculation, 47 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is xxxx.

The debtor, Hortencia M. Nunez ("Debtor") seeks confirmation of the Modified Plan to begin remitting payments after she was laid off by his employer due to COVID-19 and is now receiving unemployment. Declaration, Dckt. 76. The Modified Plan provides payments of $1,900 for 46 months commencing December 2020, and a zero percent dividend to unsecured claims totaling $36,451.77. Modified Plan, Dckt. 77. 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 January 11, 2021. Dckt. 80. Trustee opposes confirmation of the Plan on the basis that:

A. The plan does not specify the months due for cure of post-petition arrearage.

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

C. Payment of additional attorney's fees through the plan would extend the number of months for the proposed plan.

Debtor filed a Reply on January 19, 2021, which is discussed below. Dckt. 83.

DISCUSSION

Post-Petition Arrearage

Trustee asserts that due to Debtor's failure to make plan payments, Trustee has been unable to make Class 1 creditor Shellpoint (Newrez LLC) installment payments for months of April 2020 and July 2020. Trustee's accounting shows that the amount due for the unpaid installments is $2,995.10. Although the plan attempts to cure the post-petition arrearage, the plan does not state which months the claim is for. Thus, Trustee is unable to fully comply with Section 3.07 of the Plan.

In the Reply, Debtor agrees with Trustee's assessment and requests that the order confirming the plan include April 2020 and July 2020 months for the post-petition arrearage to be cured.

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 contends that although Debtor states that in her Declaration that supplemental schedules would be filed none have been filed and that Debtor does not estimate for much longer she will be eligible for unemployment. Additionally, Trustee contends that Debtor includes a vehicle payment of $444.25 as a Class 4 claim, which appears to be creditor Chrysler/TD Auto, but is uncertain whether or not Debtor is paying this expense. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

In the Declaration filed in support of the Reply (Dckt. 85) Debtor testifies that her unemployment benefits have been extended due to the contribution of the federal government and she will continue receiving $212.00 biweekly and Trustee will be notified whether the benefits end. Dckt. 85, at p. 1.

Debtor further testifies that she is no longer making a vehicle payment and the vehicle has been surrendered. *Id.*, at p. 2.

Debtor filed Janus faced [Fn.1] Supplemental Schedules I and J on January 20, 2021. Dckt. 87. Debtor's Supplemental/Amended Schedule J reflects Debtor's unemployment compensation and

reduction in retirement income. *Id.*, at p. 5. The court says "Janus-faced" because Debtor states under penalty of perjury that the Schedules are both amended, with the changes backward looking, dating back to the filing of this case, and supplemental, with the same changes being forward looking, effective only from a post-petition date.

FN. 1.

Janus-faced
Definition of Janus-faced
: having two contrasting aspects
especially : DUPLICITOUS, TWO-FACED

Synonyms

artificial, backhanded, counterfeit, double, double-dealing, double-faced, fake, feigned, hypocritical, insincere, jive [slang], left-handed, lip, mealy, mealymouthed, Pecksniffian, phony (also phoney), phony-baloney (or phoney-baloney), pretended, two-faced, unctuous

Antonyms

artless, candid, genuine, heartfelt, honest, sincere, undesigning, unfeigned

https://www.merriam-webster.com/dictionary/Janus-faced

The court has repeatedly addressed with counsel, his other clients, and through counsel his office staff that embrace a "check every box possible and let the judge figure it out" strategy. Though repeatedly addressed, the present Amended/Supplemental Schedules I and J demonstrate that counsel's client, counsel, and his staff intentionally chose not to comply with the law and continue to file Janus-faced, "*whatever*," pleadings.

At this juncture, with facially inaccurate statement being made by Debtor and Debtor's counsel continuing in the Janus-faced "whatever" pleadings, it appears that this plan cannot be confirmed.

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

Attorney's Fees

Trustee argues that the proposed monthly payment of $25.00 for attorney's fees is not sufficient to pay the fees during the proposed amount of months.

Debtor agrees with Trustee's assessment and requests the order confirming the plan include language stating that administrative fees are to receive a dividend of $33.00.

Though Debtor having addressed Trustee's concerns, the Modified Plan could comply with 11 U.S.C. §§ 1322, 1325(a), and 1329, but the Amended/Supplemental Schedules do not reflect the good

faith prosecution of this case by Debtor and counsel. The motion is **XXXXXXX** and the plan is **XXXXXXX** 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, Hortencia M. Nunez ("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 **XXXXXXX** ~~granted, and Debtor's Modified Chapter 13 Plan filed on December 10, 2020, as amended, 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.~~

18. **20-24239-E-13 RLC-1**
18 thru 19

ROBIN/THOMAS HARLAND
Stephen Reynolds

OBJECTION TO CLAIM OF INTERNAL REVENUE SERVICE, CLAIM NUMBER 12
11-11-20 [19]

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

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

Sufficient Notice Not 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 11, 2020. By the court's calculation, 76 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 Certificate of Service documents the service on Creditor, the United States of America, by mailing a copy of the Objection and supporting pleadings to:

> Internal Revenue Service
> P.O. Box 7346
> Philadelphia, PA 19101-7346

Dckt. 23. Federal Rule of Bankruptcy Procedure 3007(a)(2)(A)(ii) requires that if the objection is to the claim of the United States, or any of its officers or agencies, then it must be served as required for a summons and complaint as required by Federal Rule of Bankruptcy Procedure 7004(b)(4) or (5), which provide:

> (b) Service by first class mail. Except as provided in subdivision (h), in addition to the methods of service authorized by Rule 4(e)–(j) F.R.Civ.P., service may be made within the United States by first class mail postage prepaid as follows:
> . . .
>
> (4) **Upon the United States**, **by mailing** a copy of the summons and complaint addressed **to the civil process clerk at the office of the United States attorney for the district** in which the action is brought **and** by **mailing a copy** of the summons and complaint **to the Attorney General of the United States at Washington, District of Columbia**, and in any action attacking the validity of an order of an officer or an agency of the United States not made a party, by also mailing a copy of the summons and complaint to that officer or agency. The court shall allow a reasonable time for service pursuant to this subdivision for the purpose of curing the failure to mail a copy of the summons and complaint to multiple officers, agencies, or corporations of the United States if the plaintiff has mailed a copy of the summons and complaint either to the civil process clerk at the office of the United States attorney or to the Attorney General of the United States.

> (5) **Upon any** officer or **agency of the United States**, by **mailing a copy** of the summons and complaint **to the United States as prescribed in paragraph (4)** of this subdivision **and also to the officer or agency**. If the agency is a corporation, the mailing shall be as prescribed in paragraph (3) of this subdivision of this rule. The court shall allow a reasonable time for service pursuant to this subdivision for the purpose of curing the failure to mail a copy of the summons and complaint to multiple officers, agencies, or corporations of the United States if the plaintiff has mailed a copy of the summons and complaint either to the civil process clerk at the office of the United States attorney or to the Attorney General of the United States. If the United States trustee is the trustee in the case and service is made upon the United States trustee solely as trustee, service may be made as prescribed in paragraph (10) of this subdivision of this rule.

Federal Rule of Bankruptcy Procedure 7004(b)(4), (5) (emphasis added). *See also,* Local Bankruptcy Rule 2002-1(c). Additionally, on the Roster of Governmental Agencies posted on the court's website

The Certificate of Service, Dckt. 23, does not document service on the U.S. Attorney for the Eastern District of California or the Attorney General in Washington, D.C. Dckt. 23.

The Objection to Claim has **not** 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 12-1 of Internal Revenue Service is overruled without prejudice. ~~sustained, and the claim is disallowed for any amounts over $3,266 as to the 2017 tax return and $5,063.00 as to the 2018 tax return.~~

Robin Arlene Harland and Thomas Scott Harland, the Chapter 13 Debtor, ("Objector") requests that the court disallow the claim of Internal Revenue Service ("Creditor"), Proof of Claim No. 12-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $75,492.81. Objector asserts that the allowed amount of Claim 12 should be reduced to reflect the actual amounts owed for 2017 and 2018.

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.

According to Debtor, Creditor's Proof of Claim estimate $5,742.39 for penalties and interest owed for 2017 and $6,321.18 for penalties and interest owed for 2018.

Debtor objects on the basis that Debtors submitted their 2019 tax return in April 2020 showing a total amount owed of $3,242.00. They also submitted their 2017 and 2018 in April of 2020. The returns showed that the amount due for 2017 is $3,266.00 and the amount due for 2018 is $5,063.00.

Debtor filed the 2017 and 2018 returns as exhibits. Dckt. 22. Exhibit 2 is the 2017 tax return which reflects amount due of $3,266. *Id.*, at p. 9. Exhibit 3 appears to be the 2018 tax return. *Id.*, at p. 12-14. Page 12 of the exhibit, which would be where the amount due is listed, is illegible.

At the hearing, Counsel for Debtor xxxxxxx

~~Based on the evidence before the court, Creditor's claim is disallowed for any amounts over $3,266 as to the 2017 tax return and $5,063.00 as to the 2018 tax return. The Objection to the Proof of Claim is sustained.~~

~~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 Internal Revenue Service ("Creditor"), filed in this case by Robin Arlene Harland and Thomas Scott Harland, 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 12-1 of Creditor is sustained, and the claim is disallowed for any amounts over $3,266 as to the 2017 tax return and $5,063.00 as to the 2018 tax return.~~

~~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.~~

19.	**20-24239-E-13 RLC-2**	**ROBIN/THOMAS HARLAND Stephen Reynolds**	**MOTION TO CONFIRM PLAN 11-23-20 [27]**

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

Local Rule 9014-1(f)(1) Motion—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 24, 2020. By the court's calculation, 63 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, Robin Arlene Harland and Thomas Scott Harland ("Debtor"), seek confirmation of the Amended Plan. The Amended Plan provides for $3,600 payments for October 2020, with the remaining 59 payments to be $4,415, and a zero percent for unsecured claims totaling $35,373.45. Amended Plan, Dckt. 30. 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 12, 2020. Dckt. 34. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor is delinquent in plan payments.

B. The proposed plan may not be Debtor's best effort.

C. There is a discrepancy regarding Debtor's counsel's fees.

D. Debtor failed to provide section 521 documents.

Debtor filed a Reply to Trustee's Opposition on January 19, 2021 which is discussed below. Dckt. 37.

DISCUSSION

Delinquency

The Chapter 13 Trustee asserts that Debtor is $565.00 delinquent in plan payments. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Debtor asserts they will be current prior to the hearing. Dckt. 37, ¶ 1.

At the hearing, **xxxxxxx**

Failure to Provide Pay Stubs &Tax Returns

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

Debtor asserts that the pay advices and tax returns have been forwarded to the Trustee. Dckt. 37, ¶ 4.

At the hearing **xxxxxxx**

Attorney's Fees

Trustee notes that Section 3.05 and 3.06 indicate that the attorney is accepting a fee of $4,000.00, and accepted $0.00 prior to filing the case and $4,000.00 to be paid through the Plan at $300.00 per month. Moreover, Trustee notes that the Statement of Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys was filed also identifies the fees that were charged were $4,000.00 and $0.00 was paid prior to filing this case. However, the Disclosure of Compensation of Attorney for Debtor indicates attorney has agreed to accept **$0.00**; $0.00 has been paid prior to filing the case; and, $4,000.00 is the balance is due, which has been handwritten on the line. To date, Trustee notes, an amended Disclosure of Compensation of Attorney for Debtor has not been filed.

In the Reply, Debtor notes that an amended Disclosure will be filed shortly. *Id.*, ¶ 3.

Cannot Comply with the Plan and
May Not be Debtor's Best Effort

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Additionally, the Trustee asserts that Debtor appears to have a significant amount of additional disposable income to pay toward the Plan and have the ability to pay a 100% dividend to unsecured creditors. Amended Schedule I indicates that Debtor's monthly income is $8,832.74, and the monthly expenses are $3,161.00, which leaves a surplus of $5,671.74 that could be paid into the Plan. Yet, the proposed plan calls for one payment of $3,600.00 and 59 payments of $4,415.00, with 0% going to unsecured creditors.

Debtor asserts that the proposed payment is a good faith estimate as there are "often bumps in the road during the life of a case." Dckt. 37, ¶ 2. Thus, though Debtor states under penalty of perjury that monthly income is $8,843 a month and expenses are ($3,600), yielding monthly projected disposable income of $5,250, Debtor need to only fund the 60 month plan with $4,415 because "stuff happens" [the court's "snide" characterization]. Thus, Debtor will pocket around $840 a month for sixty months, for a total of $50,400 of projected disposable income over the life of the plan, "just in case stuff happens."

Though Debtor shows having $50,400 of additional projected disposable income, Debtor provides for a 0.00% dividend to be paid to creditors with general unsecured claims. Amended Plan, ¶3.14. Such $50,400 retention by Debtor for non-specific, unidentified "stuff" does not appear to be reasonable or in good faith. It also raises an issue of whether Debtor's filing of this case and prosecution has been in good faith, and whether Debtor can ever prosecute any bankruptcy case in good faith. [Fn.1.]

FN. 1. These two debtors are not new to bankruptcy. Their recent cases and how they were concluded during the last three and one-half years are:

Chapter 13 Case 19-23735 Represented by Counsel	Filed: June 12, 2019 Dismissed: July 8, 2020
	Case 19-23735 was dismissed due to multiple defaults in the $4,042.81 monthly plan payments. 19-23735; Civil Minutes, Dckt. 68.
Chapter 13 Case 17-28427 Represented by Counsel	Filed: December 31, 2017 Dismissed: June 7, 2019
	Case 17-28427 was dismissed due to multiple defaults in the $4,280.81 monthly plan payments. 17-28427; Civil Minutes, Dckt. 101.

Chapter 13 Case 17-22209 Represented by Counsel	Filed: April 3, 2017 Dismissed: November 21, 2017
	Case 17-22209 was dismissed due to Debtor's failure to timely prosecute confirmation of a plan as ordered by the court. 17-22209; Order, Dckt. 41.
Chapter 13 Case 16-22157 Represented by Counsel	Filed: April 5, 2016 Dismissed: February 28, 2017
	Case 16-22157 was dismissed due to Debtor's default in plan payments and showing that the plan was feasible (how the defaults would be cured). 16-22157; Civil Minutes, Dckt. 62.

Though Debtor has been represented by very experienced, respected bankruptcy counsel since first filing bankruptcy on April 5, 2016, Debtor during these past fifty-eight months has been unable to successfully prosecute a Chapter 13 case and perform a plan. Rather, the fifty-eight months have resulted in multiple defaults and multiple refilings.

It may be that Debtor's Amended Schedule J of expenses is unreasonable and should be corrected to accurately state the reasonable anticipated expenses. It may be that a contingency fund to hold a portion of the projected disposable income be held during the life of the plan, to either be paid in the plan at specified times or disbursed to Debtor upon order of the court if the feared "stuff" happens.

Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable. Debtor fails to address Trustee's concerns. According to Debtor's schedules, Debtor has a total in disposable income of $5,671.74 where the proposed plan payment is $4,415. That is a difference of over $1,000. If Debtor encounters difficulties that affect their income, Debtor is provided relief by way of modifying the plan in order to address any issues. Until then, Debtor is to be applying their disposable income to the plan.

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, Robin Arlene Harland and Thomas Scott Harland ("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.

FINAL RULINGS

20.	**19-22933-E-13** **SLE-1**	**MATTHEW RUBB** **Steele Lanphier**	**MOTION TO MODIFY PLAN** **12-7-20 [44]**

Final Ruling: No appearance at the January 26, 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 7, 2020. By the court's calculation, 50 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

The Motion to Confirm the 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, Matthew Kent Rubb ("Debtor"), has filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response indicating non-opposition on January 11, 2021. Dckt. 50. 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, Matthew Kent Rubb ("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.

21. 20-24155-E-13 KLG-2 — LANDER GREEN, Arete Kostopoulos — MOTION TO CONFIRM PLAN, 12-9-20 [37]

CASE DISMISSED: 1/7/21

Final Ruling: No appearance at the January 26, 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 Confirm Plan having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is dismissed without prejudice as moot, the case having been dismissed.

22. **18-21488-E-13 CLH-9** | **DANIEL/ALLISON BRENNAN** **Charles Hastings** | **CONTINUED MOTION TO MODIFY PLAN** **9-2-20 [203]**

Final Ruling: No appearance at the January 6, 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 Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 2, 2020. By the court's calculation, 55 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 hearing on the Motion to Confirm the Modified Plan is continued to 2:00 p.m. February 9, 2021.

The debtors, Daniel Lawrence Brennan and Allison Lyn Brennan ("Debtors") seek confirmation of the Modified Plan due to a significant reduction in income that requires them to reduce the dividend to creditors with unsecured claims to 4% and to reduce the plan payment to an amount they can afford. Declaration, Dckt. 205. The Modified Plan provides payments of $1,000 for 29 months, and a four (4) percent dividend to unsecured claims totaling $462,762. Modified Plan, Dckt. 206. 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 October 8, 2020. Dckt. 209. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor is delinquent in plan payments.

B. The plan is not feasible.

C. Plan misstates the collateral value of the Internal Revenue Service.

D. Attorney's fees remain due.

DISCUSSION

Delinquency

Debtor is $99,902.06 delinquent in plan payments. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Feasibility

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). The Plan will complete in 30 months instead of the 29 months proposed due to the $423,644.95 IRS claim, $13,063.24 in priority claims, $1,917.22 in unsecured claims, and $2,507.06 in attorney's fees.

Additionally, the confirmed plan called for a lump sum payment estimated at $359,000 from the sale of Debtor's home. After the sale, Trustee received $252,672.94, significantly less than the estimated amount. The proposed modified plan misstates the lump payment as $336,225. Trustee argues that if corrected, Debtor would be delinquent under the proposed plan by $16,350.00.

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

Internal Revenue Service Claim

According to Trustee, the proposed plan misstates the collateral value of the Internal Revenue Service in Class 2 and proposes $0.00 monthly dividend. The Trustee's records reflect that this claim is $423,644.95.

Attorney's Fees

The proposed plan provides for $0.00 monthly payment for attorney's fees. Per Trustee's records, $2,507.06 remain due.

Debtor filed a Reply on October 20, 2020 requesting the court continue the hearing to November 24, 2020 to allow for Debtor's counsel to continue discussions with counsel for the Trustee and the representative for the Internal Revenue Service to sort out the remaining claims held by the IRS and a consensual plan for payment. Dckt. 212. According to counsel for Debtor, the parties had agreed that Debtor would request the continuance for approximately 28 days so they may continue the discussions. *Id.*

At the hearing, counsel for the Debtor reported that there is an accounting issue to be addressed and requested a continuance.

November 17, 2020 Status Report

Debtor filed a Status Report on November 17, 2020 requesting a continuance of the hearing until January 26, 2021 so that they may continue discussing the amount of status with the Internal Revenue Service after the IRS representative expressed an unwillingness to reach an agreement concerning their claim until he knows that Debtors are current on their 2020 tax liability. Dckt. 214. Debtor's counsel adds that based on the discussions with the IRS representative, an agreement is possible even if the total amount of the IRS claim will not be paid in full during the plan term. *Id.*, at 2.

January 22, 2020 Status Report

Debtor filed a Status Report on November 17, 2020 requesting a continuance of the hearing until February 9, 2021 after Debtor made a timely January installment to the Internal Revenue Service but Debtor's Counsel has not heard back from the IRS representative in order to reach an agreement concerning Debtor's plan. Dckt. 217.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by the debtors, Daniel Lawrence Brennan and Allison Lyn Brennan ("Debtor") having been presented to the court, and upon review of the pleadings, the status report, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearing Motion to Confirm the Modified Plan is continued to 2:00 p.m. on February 9, 2021.

23. **19-21794-E-13 MRL-2** **VALENTINA MORGAN**
Mikalah Liviakis

MOTION FOR COMPENSATION FOR MIKALAH RAYMOND LIVIAKIS, DEBTORS ATTORNEY(S)
11-20-20 [59]

Final Ruling: No appearance at the January 26, 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 20, 2020. By the court's calculation, 67 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Allowance of Professional Fees is granted.

Mikalah Raymond Liviakis, the Attorney ("Applicant") for Valentina Morgan, 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 July 3, 2019, through January 12, 2021. Applicant requests fees in the amount of $1,672.00 and costs in the amount of $0.00.

Trustee does not oppose the fees requested, where plan was confirmed in 2017, Debtor is current in plan payments and fees appear reasonable. Dckt. 64.

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 preparation of modified plan, motion to modify, updated schedules, and response to Trustee's motion to dismiss. The court finds the services were beneficial to Client and the Estate and were reasonable.

"No-Look" Fees

In this District, the Local Rules provide consumer counsel in Chapter 13 cases with an election for the allowance of fees in connection with the services required in obtaining confirmation of a plan and the services related thereto through the debtor obtaining a discharge. Local Bankruptcy Rule 2016-1 provides, in pertinent part,

(a) Compensation. Compensation paid to attorneys for the representation of

chapter 13 debtors shall be determined according to Subpart (c) of this Local Bankruptcy Rule, unless a party-in-interest objects or the attorney opts out of Subpart (c). The failure of an attorney to file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys, shall signify that the attorney has opted out of Subpart (c). When there is an objection or when an attorney opts out, compensation shall be determined in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017, and any other applicable authority."

. . .

(c) Fixed Fees Approved in Connection with Plan Confirmation. The Court will, as part of the chapter 13 plan confirmation process, approve fees of attorneys representing chapter 13 debtors provided they comply with the requirements to this Subpart.

(1) The maximum fee that may be charged is $4,000.00 in nonbusiness cases, and $6,000.00 in business cases.

(2) The attorney for the chapter 13 debtor must file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys.

(3) If the fee under this Subpart is not sufficient to fully and fairly compensate counsel for the legal services rendered in the case, the attorney may apply for additional fees. The fee permitted under this Subpart, however, is not a retainer that, once exhausted, automatically justifies a motion for additional fees. Generally, this fee will fairly compensate the debtor's attorney for all preconfirmation services and most postconfirmation services, such as reviewing the notice of filed claims, objecting to untimely claims, and modifying the plan to conform it to the claims filed. Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation. Form EDC 3-095, Application and Declaration RE: Additional Fees and Expenses in Chapter 13 Cases, may be used when seeking additional fees. The necessity for a hearing on the application shall be governed by Fed. R. Bankr. P. 2002(a)(6).

The Order Confirming the Chapter 13 Plan expressly provides that Applicant is allowed $4,000.00 in attorneys' fees, the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dckt. 58. 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.

Chapter 13 Plan: Applicant spent 8.4 hours in this category. Applicant responded to Trustee's motion to dismiss, communicated with Debtor regarding the motion to dismiss and plan payment issues and prepared the modified plan, drafted the accompanying motion to modify, and updated Schedules I and J.

Applicant is not charging for 240 minutes (four hours) according to the task billing and billing sheet provided as Exhibit A and B. Dckt. 61.

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 Raymond Liviakis	4.4	$380.00	$1,672.00
Total Fees for Period of Application			$0.00

Costs and Expenses

Applicant is not seeking costs and expenses through this application.

FEES AND COSTS & EXPENSES ALLOWED

Fees

The unique facts surrounding the case, including preparation of modified plan, motion to modify, updated schedules, and response to Trustee's motion to dismiss 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 $1,672.00 is approved pursuant to 11 U.S.C. § 330 and authorized to be paid by David Cusick ("the Chapter 13 Trustee") from the available funds of the Plan in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

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

Fees	$1,672.00
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 Raymond 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 Raymond Liviakis is allowed the following fees and expenses as a professional of the Estate:
>
> Mikalah Raymond Liviakis, Professional Employed by Valentina Morgan ("Debtor")
>
> Fees in the amount of $1,672.00
> 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 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.

24. 19-27855-E-13 GEL-1 — GAIL CUSHMAN, Gabriel Liberman — OBJECTION TO CLAIM OF MEB LOAN TRUST IV, U.S. BANK NATIONAL ASSOCIATION, CLAIM NUMBER 2-1, 12-8-20 [18]

Final Ruling: No appearance at the January 26, 2021 hearing is required.

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 and parties requesting special notice on December 8, 2020. By the court's calculation, 49 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 2-1 of MEB Loan Trust IV, U.S. Bank National Association, not in its individual capacity but solely as Trustee is sustained, has been **dismissed without prejudice (Notice of Dismissal, Dckt. 25), and the matter is removed from the Calendar.**

Gail Lee Cushman, the Chapter 13 Debtor, ("Objector") requests that the court disallow the claim of MEB Loan Trust IV, U.S. Bank National Association, not in its individual capacity but solely as Trustee ("Creditor"), Proof of Claim No. 2-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of $37,161.84.

On January 22, 2021, Objector filed a Notice that the Objection is dismissed without

prejudice due to Creditor having filed Amended Proof of Claim 2-2 that resolved the Objection. Dckt. 25. Objector having dismissed the Objection without prejudice as provided in Federal Rule of Civil Procedure 41(a)(1)(A)(i), Federal Rules of Bankruptcy Procedure 7041, 9014(c), the matter is removed from the Calendar.