

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

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

1. [19-26014](#)-C-13 JAMES MOREN MOTION TO CONFIRM PLAN
[MJD](#)-2 Matthew DeCaminada 1-8-20 [[34](#)]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on January 8, 2020. By the court's calculation, 48 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy 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.
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The debtor, James Edward Moren ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for \$16,875.00 paid through December 2019, payments of \$6,130.00 for the remaining Plan Administrator term, and for a 0% dividend on unsecured claims totaling \$300,000.00. Amended Plan, Dckt. 38. 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 February 10, 2020. Dckt. 42. Trustee opposes confirmation on the basis that conflicting information has been provided, with the Statement of Financial Affairs reporting that all income from the past two years is from a business, while Schedule I only shows wages.

Trustee also notes 6 months of profit and loss statements for the business have been requested, but not provided.

DISCUSSION

On January 8, 2020, the Debtor filed Amended Schedule I to reflect that income is actually coming from operation of a business, and not wages. Dckt. 33.

What remains unclear is whether the 6 months' profit and loss statements for the business have been provided. Among the Debtor's duties under the Bankruptcy Code is to cooperate with the Trustee as necessary to enable the Trustee to perform the Trustee's duties. 11 U.S.C. § 521(a)(3).

At the hearing the parties reported whether sufficient documentation has been provided XXXXX

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, James Edward Moren ("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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on February 11, 2020. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The Motion to Extend the Automatic Stay is granted.
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Fouad Afif Mizyed ("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. 14-29036) was dismissed on May 21, 2019, after Debtor voluntarily requested dismissal to work out a settlement with Debtor's main creditor. See Order, Bankr. E.D. Cal. No. 14-29036, Dckt. 114. 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 after over 4 years because Debtor was gifted enough money to make a \$20,000 payment to Fay Loan Servicing, which Debtor thought was enough to pay all prepetition arrearages. Debtor dismissed the prior case and made the payment, but those funds went into a suspense account, and the arrearages remained.

Debtor believes this plan will be a successful 100% plan.

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

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

- A. Why was the previous plan filed?
- B. What has changed so that the present plan is likely to succeed?

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

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

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

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

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

The Motion to Extend the Automatic Stay filed by Fouad Afif Mizyed ("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.

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, Creditor, and Office of the United States Trustee on July 10, 2019. By the court's calculation, 230 days' notice would have been provided. Unfortunately, that date also happens to be before this bankruptcy case was filed in October 2019, and therefore is clearly incorrect.

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

<p>The Motion to Value Collateral and Secured Claim of Chrysler Capital ("Creditor") is denied without prejudice.</p>
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The Motion filed by Angela Rusfeldt ("Debtor") seeks to value the secured claim of Chrysler Capital ("Creditor"). Debtor is the owner of a 2016 Jeep Cherokee ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$15,000.00 as of the petition filing date.

As discussed above, the Proof of Service appears inaccurate. It states under penalty of perjury that "on this date" service was provided, and the date included on the signature line is "7-10-19." Dckt. 57.

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response on February 10, 2020. Dckt. 66. The Response expresses concern over whether service was proper because creditor was only served at the following address:

Chrysler Capital
Bankruptcy Dept.
P.O. Box 961275
Fort Worth, TX 76161

In Reply, the Debtor's counsel filed a Certificate of Service indicating that the Motion was served on February 10, 2020, at the following

address:

Chrysler Capital
c/o California Secretary of State
1500 11th Street
Sacramento, California 95814

Dckt. 69. The supplemental filing includes a copy of a Certificate of Surrender of Right to Transact Intrastate Business for Chrysler Capital Corporation. *Id.*

Neither of the two proofs of service show 28 days' notice was provided as is required by Local Bankruptcy Rule 9014-1(f)(1). Therefore, the Motion will be denied without prejudice.

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

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

The Motion to Value Collateral and Secured Claim filed by Angela Rusfeldt ("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 denied without prejudice.

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

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

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

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

The Motion to Confirm the Amended Plan is granted.

The debtor, Andrea Lee Baker ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for \$2,520 paid through January 25, 2020, and payments of \$1,519 thereafter for the remaining plan term. Amended Plan, Dckt. 23. 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 February 10, 2020. Dckt. 33. Trustee notes that Schedule I lists \$800 from roommate rent and \$420 from roommate food contributions, and opposes confirmation on the basis that without a supporting declaration Debtor has not shown the plan to be feasible.

DISCUSSION

Debtor filed Amended Schedules I and J on February 20, 2020. Dckt.

36. Amended Schedule I claims a total \$1,196 contribution from roommates for rent and utilities. *Id.*

Debtor also filed the Declaration of Gina Miele and Jeremy Ahlert, Debtor's roommates. Dckt. 37. That joint-declaration provides testimony that Debtor's roommates are capable of making the \$1,196.00 contribution.

The Trustee's sole ground for opposition having been addressed, it appears the Amended Plan complies with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is confirmed.

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

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

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

IT IS ORDERED that the Motion is granted, and Debtor's Amended Chapter 13 Plan filed on January 13, 2020, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

5. [19-22424](#)-C-13 EARL MILLER
[TJW](#)-3 Timothy Walsh

MOTION TO VACATE DISMISSAL OF
CASE
2-7-20 [[76](#)]

DEBTOR DISMISSED:
01/23/2020

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on February 7, 2020. By the court's calculation, 18 days' notice was provided. 14 days' notice is required.

The Motion to Vacate 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 Vacate is denied.
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Earl Lee Miller ("Debtor") filed the instant case on April 18, 2019. Dckt. 1.

On October 3, 2019, the Chapter 13 Trustee, David Cusick ("Trustee"), filed a Motion to Dismiss the Case due to a \$41,925 delinquency and unreasonable delay caused by failure to propose a new plan after the court denied confirmation of the pending plan. Dckt. 62. On January 8, 2020, a hearing on the Motion to Dismiss was held, and the Motion was granted. Dckt. 73.

On February 7, 2020, Debtor filed this instant Motion to Vacate. Debtor's counsel argues that five days after the order dismissing the case was issued, Debtor's worker's comp settlement check came in, amounting to \$180,174.28.

Debtor seeks to have the order dismissing the case vacated, per Federal Rule of Civil Procedure 60(b).

TRUSTEE'S RESPONSE

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response on February 12, 2020. Dckt. 84. Trustee argues that the \$180K+ settlement exceeds the \$80,000 in claims proposed to be paid under the most recent pending plan, which proposed 0\$ to unsecured claims.

Trustee argues that if the Motion is granted, the funds, which were not scheduled, should be ordered over to the Trustee. Trustee notes further that the evidence supporting the Motion is not very clear.

APPLICABLE LAW

Federal Rule of Civil Procedure Rule 60(b), as made applicable by Federal Rule of Bankruptcy Procedure 9024, governs the reconsideration of a judgment or order. Grounds for relief from a final judgment, order, or other proceeding are limited to:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

FED. R. CIV. P. 60(b). A Rule 60(b) motion may not be used as a substitute for a timely appeal. *Latham v. Wells Fargo Bank, N.A.*, 987 F.2d 1199, 1203 (5th Cir. 1993). The court uses equitable principles when applying Rule 60(b). See 11 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 2857 (3d ed. 1998). The so-called catch-all provision, Federal Rule of Civil Procedure 60(b)(6), is "a grand reservoir of equitable power to do justice in a particular case." *Uni-Rty Corp. V. Guangdong Bldg., Inc.*, 571 F. App'x 62, 65 (2d Cir. 2014) (citation omitted). While the other enumerated provisions of Rule 60(b) and Rule 60(b)(6) are mutually exclusive, relief under Rule 60(b)(6) may be granted in extraordinary circumstances. *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 863 & n.11 (1988).

A condition of granting relief under Rule 60(b) is that the requesting party show that there is a meritorious claim or defense. This does not require a showing that the moving party will or is likely to prevail in the underlying action. Rather, the party seeking the relief must allege enough facts that, if taken as true, allow the court to determine if

it appears that such defense or claim could be meritorious. 12 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶¶ 60.24[1]-[2] (3d ed. 2010); see also *Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984).

Additionally, when reviewing a motion under Rule 60(b), courts consider three factors: "(1) whether the plaintiff will be prejudiced, (2) whether the defendant has a meritorious defense, and (3) whether culpable conduct of the defendant led to the default." *Falk*, 739 F.2d at 463 (citations omitted).

DISCUSSION

As an initial policy matter, the finality of judgments is an important legal and social interest. The standard for determining whether a Rule 60(b)(1) motion is filed within a reasonable time is a case-by-case analysis. The analysis considers "the interest in finality, the reason for delay, the practical ability of the litigant to learn earlier of the grounds relied upon, and prejudice to other parties." *Gravatt v. Paul Revere Life Ins. Co.*, 101 F. App'x 194, 196 (9th Cir. 2004) (citations omitted); *Sallie Mae Servicing, LP v. Williams (In re Williams)*, 287 B.R. 787, 793 (B.A.P. 9th Cir. 2002) (citation omitted).

Debtor argues the court's order dismissing the case should be vacated because Debtor received monies to fund the plan shortly after dismissal. This in itself is misleading—Trustee's Motion to Dismiss was filed in October 2019, and initially heard November 2019. Dckts. 62, 70. The hearing was continued after Debtor reported the worker's compensation claim was resolved. Dckt. 70.

Nearly two months later, on January 8, 2020, there still existed a very large delinquency, and no plan was filed. Dckt. 72. Debtor's counsel argues funds came in "January 28, 2020, just 5 days after the order of dismissal!" Dckt. 76 at p. 2:23-24. This was actually 20 days after the continued hearing, which was months after the Motion To Dismiss was filed.

Debtor's counsel also missed that a separate basis for dismissal was the Debtor's failure to propose a plan after the pending plan was denied confirmation.

None of the grounds for reconsideration provided by Federal Rule of Civil Procedure Rule 60(b) have been argued here. Therefore, the Motion is denied.

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

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

The Motion to Vacate filed by Earl Lee Miller ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 11, 2019. By the court's calculation, 48 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is granted.

The debtor, Timothy Patrick Janovich ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for \$1,850 paid through November 2019, and payments of \$1,875 for 34 months (or until the plan is completed through surplus funds from the sale of Debtor's real property). Amended Plan, Dckt. 58. 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 14, 2020. The opposition notes that certain details are missing, including how much is necessary to pay off claims, and that the plan relies on Debtor contributing surplus proceeds from the sale of Debtor's real property which have been reported to be upwards of \$200,000.00. Trustee also notes that Debtor filed Amended Schedules I and J which reflect increases to both income and expenses, resulting in roughly the same net.

CREDITOR'S OPPOSITION

Creditor U.S. Bank Trust National Association as Trustee of the Chalet Series IV Trust ("Creditor") filed an Opposition on January 14, 2020, arguing that the plan is currently too speculative to be confirmed because it relies on the surplus funds being disbursed. Dckt. 74.

DEBTOR'S REPLY

Debtor filed a Reply on January 21, 2020, noting that Debtor's counsel and counsel for Fay Servicing, LLC, have been working on an agreement to disburse the surplus sale proceeds to the Trustee. Dckt. 76. Debtor requests a continuance to allow time to complete and file that stipulation.

JANUARY 28, 2020 HEARING

At the hearing the Debtor reported the current status of the surplus sale proceeds, stating that the overpayment is being held by the trustee conducting the foreclosure. Dckt. 78. The hearing was continued to allow the Debtor to resolve the issue.

DEBTOR'S SUPPLEMENTAL REPLY

Debtor filed a Supplement on February 18, 2020, reporting that a stipulation was filed (Dckt. 80) and approved by the court, resolving the sale proceeds issue. Order, Dckt. 81.

DISCUSSION

With the surplus proceeds addressed through court-approved stipulation, the Amended Plan appears to comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is confirmed.

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

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

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

IT IS ORDERED that the Motion is granted, and Debtor's Amended Chapter 13 Plan filed on December 11, 2019, 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.

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 February 11, 2020. By the court's calculation, 14 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, -----
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The Motion to Value Collateral and Secured Claim of StateBridge Company, LLC ("Creditor") is granted, and Creditor's secured claim is determined to have a value of \$0.00.

The Motion to Value filed by Vernon Pryor and Judith Pryor ("Debtor") to value the secured claim of StateBridge Company, LLC ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 12. Debtor is the owner of the subject real property commonly known as 147 2nd Avenue, Orland, California ("Property"). Debtor seeks to value the Property at a fair market value of \$220,000.00 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).

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

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

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

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

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately \$234,809.84. Schedule D, Dckt. 1. Creditor's second deed of trust secures a claim with a balance of approximately \$61,482.98. *Id.* Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of \$0.00, the value of the collateral, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion to Value Collateral and Secured Claim filed by Vernon Pryor and Judith Pryor ("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 StateBridge Company, LLC ("Creditor") secured by a XXX in priority deed of trust recorded against the real property commonly known as 147 2nd Avenue, Orland, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim

is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$220,000.00 and is encumbered by a senior lien securing a claim in the amount of \$234,809.84, which exceeds the value of the Property that is subject to Creditor's lien.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 14, 2020. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is denied.

The debtor, Haeja Koh ("Debtor") seeks confirmation of the Modified Plan to reflect her being fired in December 2019 for filling a fake prescription. Declaration, Dckt. 65. The Modified Plan provides for \$32,164.00 paid through month 17; nothing paid in months 18 and 19; and a lump sum of \$6,750.00 in month 20. Modified Plan, Dckt. 68. 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 February 10, 2020. Dckt. 71. Trustee opposes confirmation on the following grounds:

1. The modified plan reduces the term from 60 to 20 months and reduces the unsecured claim dividend from 100% to 0%. The applicable commitment period here is 5 years.
2. Debtor is proposing to pay a lump sum of \$6,750 into

the plan where debtor is unemployed and may not become employed.

3. Debtor received a lump sum of \$10,154.67, which has not been exempted and may need to be considered for a liquidation analysis.

DEBTOR'S REPLY

Debtor filed a Reply on February 18, 2020. Dckt. 74. Debtor reports she recently was awarded temporary disability, and experienced changes to expenses, and therefore needs to amend schedules. Debtor indicates a Third Modified Plan will be filed.

DISCUSSION

The Debtor has conceded that the current schedules do not reflect her financial situation, and must be amended. The modified plan will also be revised for this reason.

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, Haeja Koh ("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.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on January 14, 2020. By the court's calculation, 42 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.
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The debtor, Martha Masiel Ramirez ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for payments of \$5,092.00 for 60 months, and a 100% dividend to unsecured claims totaling \$4,510.74. Amended Plan, Dckt. 88. 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 February 4, 2020. Dckt. 103. Trustee opposes confirmation on the following grounds:

1. Debtor is \$3,575.81 delinquent under the proposed plan.
2. Despite the plan having nonstandard provisions, the unchecked box at section 1.02 of the plan indicates there are no nonstandard provisions.
3. The nonstandard provisions list 5 properties "to be placed for sale." But, no details about the proposed

sales are provided.

4. Debtor has not provided the business documents required by 11 U.S.C. § 521.
5. Debtor did not list dependents on Schedule J, but admitted at the Meeting of Creditors her non-filing spouse and stepson reside with her.
6. Debtor listed on Schedule I income from a business, but has not provided the normal attachment for this income.
7. Debtor admitted at the Meeting of Creditors she may have unscheduled lawsuits.
8. On April 25, 2019, Debtor received a refund of \$37,486.54 from dismissal of her prior case. The Trustee has requested a breakdown of where these monies went, and has received nothing.
9. Debtor admitted at the Meeting of Creditors she has several unscheduled real properties.

CREDITOR'S OPPOSITION

Sutter County Tax Collector ("Creditor") filed an Opposition on February 11, 2020. Dckt. 111. Creditor argues the plan incorrectly identifies its claim as totaling as \$6,400 and secured by only one property, where the claim actually totals \$18,913.43 and is secured by all real property.

Creditor argues the plan is not confirmable because (1) it fails to provide for the full amount of its claim; (2) fails to provide for a postpetition real property taxes; (3) is not feasible (as indicated by Debtor's default in taxes as to five properties, and this being Debtor's sixth bankruptcy case); and (4) was not proposed in good faith (indicated by prior filings, unscheduled assets, lack of prosecution).

DISCUSSION

The present plan is not confirmable.

Before even looking to the proposed plan's contents, the Debtor has failed to meet the requirements of the Bankruptcy Code by not providing Trustee all 11 U.S.C. § 521 documents, and not listing all real property on her schedules.

On February 6, 2020, Debtor filed a Motion To Sell real property known as 3629 Highway 20, Browns Valley, California for \$25,000. Dckt. 106. This property was not scheduled.

In the Declaration filed with that Motion To Sell, the Debtor states under penalty of perjury "I have claimed an exemption on this property for \$26,900.00." Dckt. 108 at ¶ 4.d. No exemption is actually claimed on Schedule C.

When it comes to the plan, it is clear Debtor has an up-hill battle with respect to proving the plan is feasible. Debtor is a serial filer. Even though Debtor's most recent prior case was dismissed less than a year before this case, there are \$55,000+ in tax claims. Trustee has reported that a refund of \$37,486.54 Debtor received after her prior case was dismissed has not been accounted for. All these facts also suggest the plan, and the case, were not filed in good faith.

The plan lists five properties to be sold. But, no details are provided. No professional has been employed to market and sell those properties.

Debtor lists the claim of Fay Servicing LLC to be paid an arrearage dividend of \$2,199.83 and postpetition payment of \$860 monthly. This appears to be the claim secured by 912 Clark Ave, Yuba City, California-the court issued an order granting 11 U.S.C. § 362(d)(4) relief as to that property, and it is probable that the creditor will foreclose on that property. Order, Dckt. 70.

The plan is not feasible. Further, based upon the omissions of assets and lack of prosecution, the case does not appear to have been filed in good faith.

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, Martha Masiel Ramirez ("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 Ruling: No appearance at the February 25, 2020, hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on January 22, 2020. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

The Motion to Value Collateral and Secured Claim has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). 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 Toyota Motor Credit Corporation ("Creditor") is granted, and Creditor's secured claim is determined to have a value of \$16,300.

The Motion filed by Louie Graham Gilligan and Shardalai Monique Gilligan ("Debtor") to value the secured claim of Toyota Motor Credit Corporation ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 22. Debtor is the owner of a 2016 Toyota RAV4 ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$16,300.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See FED. R. EVID. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on October 2, 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 \$28,143.16. Proof of Claim, No. 10. 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 \$16,300.00, 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 Louie Graham Gilligan and Shardalai Monique Gilligan ("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 Toyota Motor Credit Corporation ("Creditor") secured by an asset described as 2016 Toyota RAV4 ("Vehicle") is determined to be a secured claim in the amount of 16,300.00, 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 \$16,300.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

11. [16-22359](#)-C-13 DENNIS/KIM CAMPBELL
[TJW](#)-2 Timothy Walsh

MOTION TO MODIFY PLAN
1-7-20 [[60](#)]

DEBTOR DISMISSED: 1/23/2020
JOINT DEBTOR DISMISSED: 1/23/2020

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

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on January 14, 2020. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

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

The Objection to Discharge is sustained.

The Chapter 13 Trustee, David Cusick ("Trustee"), objects to Micah Sean Metz and Tina Marie Metz's ("Debtor") discharge in this case. Objector argues that Debtor is not entitled to a discharge in the instant bankruptcy case because Debtor previously received a discharge in a Chapter 7 case.

Debtor filed a Chapter 7 bankruptcy case on May 7, 2018. Case No. 18-22818. Debtor received a discharge on August 7, 2018. Case No. 18-22818, Dckt. 15.

The instant case was filed under Chapter 13 on 11/22/2019.

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

Here, Debtor received a discharge under 11 U.S.C. § 727 on August 7, 2018, which is less than four years preceding the date of the filing of the instant case. Case No. 18-22818, Dckt. 15. Therefore, pursuant to 11 U.S.C. § 1328(f) (1), Debtor is not eligible for a discharge in the instant case.

Therefore, the Objection is sustained. Upon successful completion of the instant case (Case No. 19-27259), the case shall be closed without the entry of a discharge, and Debtor shall receive no discharge in the instant case.

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

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

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

IT IS ORDERED that Objection to Discharge is sustained, and upon successful completion of the instant case, Case No. 19-27259, the case shall be closed without the entry of a discharge.

13. [19-27659](#)-C-13 SHIRLEY COOPER
[20-2013](#)
PGM-1

MOTION FOR PRELIMINARY
INJUNCTION AND/OR MOTION FOR
TEMPORARY RESTRAINING ORDER
2-10-20 [[7](#)]

COOPER V. WILMINGTON SAVINGS
FUND SOCIETY, FSB ET AL

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on creditors, the defendant, the Chapter 13 Trustee, and the US Trustee on February 10, 2020. By the court's calculation, 15 days' notice was provided.

The Motion for Temporary Restraining Order and Preliminary Injunction properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (3). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing -----.

The Motion for Temporary Restraining Order and Preliminary Injunction is XXXXX.

On February 10, 2020, Shirley Cooper, the debtor herein, filed an Emergency Motion for Temporary Restraining Order and Preliminary Injunction, which motion is set for hearing before this court on February 25, 2020 at 2:00 p.m.

The debtor, Shirley Cooper, contends that the defendant in this adversary proceeding, Wilmington Savings Fund Society FSB, as Trustee of Stanwich Mortgage Loan Trust A, improperly foreclosed on her real property commonly known as 7753 Mariposa Avenue, Citrus Heights, California. She requests a temporary restraining order and preliminary injunction against further sales efforts and seeks to negate the foreclosure sale so she can pay the debt in full in a chapter 13 case.

The essential allegations are that the. foreclosed property was

hijacked by way of a forged quitclaim deed to one Fernando Nario who then filed a chapter 7 bankruptcy case but claimed no interest in the property. The forged deed was supposedly executed in June 2019, by Shirley Cooper and by James Cooper, who actually had died in 2012. The notary before whom the quitclaim deed was executed supposedly denies knowledge of the transaction and contends her signature and notary stamp were forged (and says another such incident is already the subject of police investigation) Wilmington obtained In Rem relief in Nario's case in the Northern District of California pursuant to 11 U.S.C. § 362(d) (4) without, it is alleged, proper notice to Shirley Cooper.

On February 12, 2020, the court issued an Order requiring the debtor to file a motion in the Northern District of California Bankruptcy Court, Oakland Division, in Case No. 19-41567, moving for relief from an order issued pursuant to 11 U.S.C. § 362(d) (4).

DISCUSSION

At the hearing, **xxxxxxxxxxxxxx**.

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

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

The Motion for Temporary Restraining Order and Preliminary Injunction filed by George P Rebong ("Debtor") having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that **xxxxxxxxxxxxxx**.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 23, 2020. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

The Motion for Entry of Hardship Discharge is granted.

George P Rebong ("Debtor") moves for entry of a hardship discharge because Debtor was diagnosed with cancer in November 2019, and has been unable to work given the aggressive treatment. Debtor has been receiving short-term disability payments through Lincoln Financial Group of \$680 monthly, and also receives family support.

Debtor has paid a total of \$36,740.99 into his plan, and estimates that if converted to Chapter 7 creditors would receive \$0.00. Debtor does not anticipate being able to make Chapter 13 payments until such time as he beats his cancer into remission.

Debtor argues the illness is beyond his control, that conversion to Chapter 7 would not result in a greater distribution to unsecured claims, and that plan modification is not practicable.

On February 6, 2020, The Chapter 13 Trustee, David Cusick ("Trustee"), filed a statement of non-opposition. Dckt. 26.

APPLICABLE LAW

Section 1328(b) of the Bankruptcy Code states:

Subject to subsection (d), at any time after the confirmation of the plan and after notice and a hearing, the court may grant a discharge to a debtor that has not completed payments under the plan only if-

(1) the debtor's failure to complete such payments is due to circumstances for which the debtor should not justly be held accountable;

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

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

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

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

- A. Whether the debtor has presented substantial evidence that he or she had the ability and intention to perform under the plan at the time of confirmation;
- B. Whether the debtor did materially perform under the plan from the date of confirmation until the date of the intervening event or events;
- C. Whether the intervening event or events were reasonably foreseeable at the time of confirmation of the Chapter 13 plan;
- D. Whether the intervening event or events are expected to continue in the reasonably foreseeable future;
- E. Whether the debtor had control, direct or indirect, of the intervening event or events; and
- F. Whether the intervening event or events constituted a sufficient and proximate cause for the failure to

make the required payments.

Id.

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

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

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

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

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

DISCUSSION

Debtor has demonstrated to the court that the elements of 11 U.S.C. § 1328(b) have been met. While some courts have required that a debtor face a catastrophe, that is not a requirement. In this case, however, there has been a clear catastrophe in Debtor's life that prevents Debtor from complying with and completing the Plan. The Motion is granted, and a hardship discharge under 11 U.S.C. § 1328(b) is entered for Debtor in this case.

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

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

The Motion for Hardship Discharge filed by George P Rebong ("Debtor") having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and the court shall enter a "hardship" discharge pursuant to 11 U.S.C. § 1328(b) for George P Rebong in this case based on the Plan as performed as of the February 25, 2020, hearing date on this Motion.

THRU #16

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on February 4, 2020. By the court's calculation, 21 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.
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The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that:

- A. the debtor, Paul F Ottaviano ("Debtor") did not appear at the January 30, 2020, Meeting of Creditors. The Meeting was continued to March 12, 2020.
- B. Debtor is \$2,296.81 delinquent in plan payments.
- C. The plan proposes valuing the secured claim of Hyundai Motor Finance, but the court has yet to issue an order valuing that claim.
- D. The Statement of Rights and Responsibilities indicate Debtor's counsel has been paid and agrees to accept \$0.00. This conflicts with the plan and Disclosure of Attorney Compensation which indicate a fee of \$4,000

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

Page 34 of 65

and \$1,000 paid.

E. Debtor did not provide Debtor's middle name.

DISCUSSION

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

Debtor is \$2,296.81 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's Plan proposes valuing the secured claim of Hyundai Motor Finance. However, no motion has been filed seeking that relief. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

The Plan, as to attorney compensation, conflicts with the filed Statement of Rights and Responsibilities. An Statement of Rights and Responsibilities will need to be filed.

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

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

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

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

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

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, the Chapter 13 Trustee, and the US Trustee on February 4, 2020. By the court's calculation, 21 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.
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Deutsche Bank National Trust Company, As Trustee For GSRPM Mortgage Loan Trust
2007-1 Mortgage Pass-Through Certificates, Series 2007-1 ("Creditor") holding a secured claim opposes confirmation of the Plan because the stated arrearages are \$10,567.00, while Creditor argues the actual arrearages are \$11,137.02.

Without providing for the full arrearage, the plan does not appear to be feasible. 11 U.S.C. § 1325(a) (6).

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 Deutsche Bank National Trust Company, As Trustee For GSRPM Mortgage Loan Trust 2007-1 Mortgage Pass-Through Certificates, Series 2007-1 ("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.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 14, 2020. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a) (9); LOCAL BANKR. R. 3015-1(d) (1).

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

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Tanya Michelle Norfles ("Debtor") has provided evidence in support of confirmation.

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response on February 10, 2020, noting that the plan calls for payments of \$780 while Schedules I and J reflect net income of \$750.00. Dckt. 76.

Debtor filed a Reply on February 17, 2020, arguing that notwithstanding the schedules Debtor is current in plan payments. Dckt. 70.

While the plan payment is higher than Debtor's net disposable income reported on Schedules I and J by \$30, the difference is modest, and Debtor appears to be able to make the payment.

The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

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

IT IS ORDERED that the Motion is granted, and Debtor's Amended Chapter 13 Plan filed on January 14, 2020, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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

Local Rule 9014-1(f)(1) Motion-Hearing Not Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 3, 2020. By the court's calculation, 53 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)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The hearing on the Motion to Confirm the Modified Plan is continued to April 28, 2020 at 2:00p.m.

The debtor, Octavio Gonzalez Saenz and Diana Carolina Saenz ("Debtor") seek confirmation of the Modified Plan to account for recent loan modification negotiations. Declaration, Dckt. 77. The Modified Plan provides for \$25,085.38 paid through December 2019, and payments of \$3,688 for the remaining plan term. Modified Plan, Dckt. 75. 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 February 7, 2020. Dckt. 83. Trustee opposes confirmation on the following grounds:

1. Debtor is \$3,688 delinquent in plan payments.

2. The plan relies on approval of a trial loan modification. Those payments to PennyMac Loan Services, LLC, are currently unauthorized.
3. Debtor filed supplemental schedules as exhibits only.

DEBTOR'S REPLY

Debtor filed a Reply on February 18, 2020. Dckt. 87. Debtor requests language be added to the order confirming reduce the plan payment to \$1,022.00 going forward, and authorizing payments to PennyMac Loan Services, LLC. Debtor also asserts supplemental schedules will be filed.

DISCUSSION

Trustee's Opposition states that the plan's confirmation depends in part on approval of a loan modification. Debtor filed a Motion for that purpose, which is set for hearing April 28, 2020. Dckt. 90. The court shall continue this hearing to that date.

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, Octavio Gonzalez Saenz and Diana Carolina Saenz ("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 hearing on the Motion to Confirm the Modified Plan is continued to April 28, 2020 at 2:00p.m.

19. [19-21277](#)-C-13 JASON/TIFFANIE RUPCHOCK
[PLC](#)-5 Peter Cianchetta

OBJECTION TO CLAIM OF INTERNAL
REVENUE SERVICE, CLAIM NUMBER
21
1-3-20 [[86](#)]

THRU #20

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Chapter 13 Trustee, and Office of the United States Trustee on January 3, 2020. By the court's calculation, 53 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b) (1) (requiring fourteen days' notice for written opposition).

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

The Objection to Proof of Claim Number 21 of the Internal Revenue Service is overruled without prejudice.

The debtors, Jason Peter Rupchock and Tiffanie Ann Rupchock ("Debtor"), filed this Objection contesting the amount the Internal Revenue Service ("IRS") asserts is owed. The IRS filed Proof of Claim, No. 21, asserting a claim of \$99,616.83. Debtor argues the amount of the claim should be \$5,415.00.

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:

5. The Debtors agree the INTERNAL REVENUE SERVICE has a valid claim; however, they disagree with the amount of the claim and asserts the claim should be allowed in the amount of \$5,415.00.

6. Debtors have attempted to resolve this informally however the INTERNAL REVENUE SERVICE has not been responsive.

7. Debtors therefore assert that sufficient questions have been raised to challenge the validity of the claim.

Objection, Dckt. 86. Debtor's Declaration further explains:

3. Upon learning that it appeared some past tax returns had not been received by the INTERNAL REVENUE SERVICE we attempted to contact our former tax preparer. We could not find her because she is no longer in business, however we found our copies of the tax returns and have transmitted them to the INTERNAL REVENUE SERVICE.

4. We believe after processing the missing returns the INTERNAL REVENUE SERVICE will agree that we only owe \$5,415.00.

Declaration, Dckt. 88.

Thus, it appears Debtor is arguing (but that argument is not included in the Objection) that the IRS' claim is based on certain returns not having been filed yet. But, Debtor has not filed these returns to show the court what is owed. Debtor has merely concluded for the court that \$5,415.00 is owed without providing any evidence supporting that calculation.

Without any evidence (or even analysis) explaining what amounts are owed to the IRS, the Objection to the Proof of Claim is overruled without prejudice.

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

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

The Objection to Claim of Internal Revenue Service ("IRS"), filed in this case by 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 the Objection to the Proof of Claim is overruled without prejudice.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 3, 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 denied.
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The debtors, Jason Peter Rupchock and Tiffanie Ann Rupchock ("Debtor"), seek confirmation of the Amended Plan. The Amended Plan provides for \$13,129.99 paid through December 2019 and for payments of \$1,570 thereafter. Amended Plan, Dckt. 84. 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 27, 2020. Dckt. 95. Trustee opposes confirmation primarily because the plan does not account for the larger than scheduled unsecured claims—primarily the claim of the Internal Revenue Service. Trustee notes an Objection to Claim has been filed, but if not sustained the plan will complete in 116 months.

DISCUSSION

A review of the docket shows the court overruled without prejudice

the Debtor's Objection To Claim of the IRS because there was no evidence or argument showing what amounts are properly owed by the Debtor.

With the unsecured and priority claims vastly greater than anticipated, this plan does not mathematically work.

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on January 29, 2020. By the court's calculation, 13 days' notice was provided. The court issued an order shortening the time required for notice to 13 days. Dckt. 36.

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

- A. Debtor's plan proposes valuing the secured claim of TD Auto Finance, but the court has not issued an order valuing that claim yet.
- B. The claim of Chase Bank is listed as a Class 1 and Class 4.
- C. Debtor has not provided a copy of Debtor's recent tax return.
- D. The Trustee has requested and Debtor has yet to provide a copy of the revocable living trust listed on Schedule B.

FEBRUARY 11, 2020 HEARING

At the February 11, 2020, the Trustee reported some documentation had been provided, and some issues resolved. The hearing was continued to allow the Objection to be heard alongside Debtor's Motion seeking to value secured claim of TD Auto Finance. Dckt. 40.

DISCUSSION

A review of the docket shows the court has granted the Debtor's Motion To Value secured claim of TD auto Finance. Therefore, it appears all grounds for opposition have been resolved.

The Plan does comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is overruled, and the Plan 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 Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Debtor's Amended Chapter 13 Plan filed on December 17, 2019, 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.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on January 22, 2020. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

The Motion to Value Collateral and Secured Claim has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f) (1) (B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). 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 TD Auto Finance ("Creditor") is granted, and Creditor's secured claim is determined to have a value of \$7,000.

The Motion filed by Yvonne Rose Richards ("Debtor") to value the secured claim of TD Auto Finance ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 26. Debtor is the owner of a 2014 Ford Focus ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$7,000 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See FED. R. EVID. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on November 8, 2015, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$9,094.27. Proof of Claim, No. 2. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's

secured claim is determined to be in the amount of \$7,000, 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 Yvonne Rose Richards ("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 TD Auto Finance ("Creditor") secured by an asset described as 2014 Ford Focus ("Vehicle") is determined to be a secured claim in the amount of \$7,000, 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 \$7,000 and is encumbered by a lien securing a claim that exceeds the value of the asset.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on February 4, 2020. By the court's calculation, 21 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.
--

Francine Valerie Mitchell ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 18-27527) was dismissed on August 8, 2019, after Debtor fell delinquent in plan payments. See Order, Bankr. E.D. Cal. No. 18-27527, Dckt. 48, August 8, 2019. 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 this case will be successful because she has taken a second job. The negative inference is simply that Debtor was previously not making enough money to make the payments.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c) (3) (B). As this court has noted in other cases, Congress expressly provides in 11

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

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

- A. Why was the previous plan filed?
- B. What has changed so that the present plan is likely to succeed?

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

Debtor has sufficiently 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 Francine Valerie Mitchell ("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.

24. [19-20782](#)-C-13 MICHAEL/DENISE BARRON
GW-5 Gerald White

MOTION FOR COMPENSATION FOR
GERALD L. WHITE, DEBTORS
ATTORNEY(S)
1-14-20 [[67](#)]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 14, 2020. By the court's calculation, 42 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.

Gerald L. White, the Attorney ("Applicant") for Michael Ray Barron and Denise Lori Barron, the debtor ("Client"), makes a First Interim Request for the Allowance of Fees and Expenses in this case.

Applicant requests fees in the amount of \$14,790.00 and costs in the amount of \$351.20.

APPLICABLE LAW

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)).

Lodestar Analysis

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). Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate, however. See *id.* (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)).

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 demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. 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 [professional 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, or other professional as appropriate, is obligated to consider:

- (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?

(b) To what extent will the estate suffer if the services are not rendered?

(c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

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

A review of the application shows that Applicant's services for the Estate include general case administration, sale of Debtor's residence, and objection to claims. The court finds the services were beneficial to Client and the Estate and were reasonable.

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.

Preparation of Schedules and Plan - 18.55 hours

Plan Confirmation - 8 hours

Review of Claims - 6.75 hours

Sale of Debtor's Residence - 9.45 hours

Objection to Claim of NC Financial- 3.25 hours

Case Management - 3.30 hours

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
Gerald White	49.30	\$300.00	\$14,790.00
Total Fees for Period of Application			\$14,790.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$351.20 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Cost
Filing Fee	\$310.00
Court Call	\$41.20
Total Costs Requested in Application	\$351.20

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First Interim Fees in the amount of \$14,790.00 are approved pursuant to 11 U.S.C. § 331, and subject to final review pursuant to 11 U.S.C. § 330, and authorized to be paid by the Chapter 13 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 13 case.

Costs & Expenses

First Interim Costs in the amount of \$451.20 are approved pursuant to 11 U.S.C. § 331, and subject to final review pursuant to 11 U.S.C. § 330, and authorized to be paid by the Chapter 13 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 13 case.

The court authorizes the Chapter 13 Trustee to pay the fees and costs allowed by the court.

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

Fees	\$14,790.00
Costs and Expenses	\$351.20

pursuant to this Application as interim fees pursuant to 11 U.S.C. § 331 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 Gerald L. White ("Applicant"), Attorney for Michael Ray Barron and Denise Lori Barron, ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Applicant is allowed the following fees and expenses as a professional of the Estate:

Applicant, Professional employed by Client,

Fees in the amount of \$14,790.00

Expenses in the amount of \$351.20,

as an interim allowance of fees and expenses pursuant to 11 U.S.C. § 331 and subject to final review and allowance pursuant to 11 U.S.C. § 330.

IT IS FURTHER ORDERED that the Chapter 13 Trustee is authorized to pay the fees and costs allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 13 case.

25. [18-23689](#)-C-13 KATHLEEN PIGNATARO
[NSV](#)-3 Nima Vokshori

CONTINUED MOTION TO EMPLOY
DEEPAK DEVABOSE AS SPECIAL
COUNSEL
12-19-19 [[77](#)]

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

Kathleen Marie Pignataro ("Debtor") having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Motion To Employ was dismissed without prejudice, and the matter is removed from the calendar.**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) on January 7, 2020. By the court's calculation, 49 days' notice was provided. 28 days' notice is required.

The Objection to Claimed Exemptions 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 Objection to Claimed Exemptions is sustained, and the exemptions are disallowed in their entirety.

David Cusick ("the Chapter 13 Trustee") objects to Yevgeniy Zhilovskiy's ("Debtor") use of the California exemptions without the filing of the spousal waiver required by California Code of Civil Procedure § 703.140. California Code of Civil Procedure § 703.140(a)(2), provides:

If the petition is filed individually, and not jointly, for a spouse, the exemptions provided by this chapter other than the provisions of subdivision (b) are applicable, except that, if **both** of the spouses effectively waive in writing the right to claim, during the period the case commenced by filing the petition is pending, the exemptions provided by the applicable exemption provisions of this chapter, other than subdivision (b), in any case commenced by filing a petition for either of them under Title 11 of the United States Code, then they may elect to instead utilize the applicable exemptions set forth in subdivision (b).

(emphasis added). The court's review of the docket reveals that the spousal

wavier has not been filed.

Trustee also argues that Debtor improperly uses section 703.140(b)(2) (motor vehicles) to exempt furniture, and that Debtor claimed his house \$2,671,200 exempt which is well-over the exemption limit.

The Trustee's Objection is sustained, and the claimed exemptions are disallowed.

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

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

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

IT IS ORDERED that Objection is sustained, and the claimed exemptions are disallowed in their entirety.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 8, 2020. By the court's calculation, 48 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is denied.

The debtor, Donald R Ulicny ("Debtor") seeks confirmation of the Modified Plan. The Modified Plan provides for \$2,332 a month paid through October 2019, and 46 payments of \$340 thereafter. Modified Plan, Dckt. 67. 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 February 7, 2020. Dckt. 73. Trustee opposes confirmation on the following grounds:

1. Debtor's non-exempt equity is \$56,175.00. However, the Plan provides only a 10% dividend to unsecured claims totaling \$144,364.26.
2. Debtor is \$1,410.00 overpaid into the plan.

CREDITOR'S OPPOSITION

Debtor filed a Reply requesting that the payment be increased to \$1,023 in the order confirming plan. Debtor notes Amended Schedules were filed to reflect Debtor's ability to make these payments.

DISCUSSION

Debtor filed Amended Schedules I and J to reflect more current information as to what Debtor will owe in tax withholdings. With the correction, Debtor believes he has an ability to make payments of \$1,023.00, which provide a 30% dividend to unsecured claims.

But, a 30% dividend of \$144,364.26 equates to \$43,309.278—a figure substantially less than the \$56,175.00 in nonexempt assets. Therefore, the plan fails the liquidation test and is not confirmable. 11 U.S.C. § 1325(a)(4).

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, Donald R Ulicny ("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.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 5, 2019. By the court's calculation, 85 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.
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The debtor, Aileen Fermin Ambrosio ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for payments of \$4,350.00 per month for 12 months; \$4,550.00 per month for 12 months; \$4,750.00 per month for 12 months; \$4,950.00 per month for 12 months; and \$5,150.00 per month for 12 months. Amended Plan, Dckt. 97. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on December 27, 2019. Dckt. 104. Trustee opposes confirmation on the following grounds:

1. Debtor is \$4,349.00 delinquent in plan payments.
2. The Motion fails FRBP 9013.
3. The additional provisions provides for only a small portion of the IRS' secured claim to be paid; for

none of the IRS' priority claim to be paid; and for none of the FTB's secured claim to be paid other than the priority amounts.

DISCUSSION

The plan does not appear feasible. The debtor is already delinquent in plan payments, and the Debtor does not account for the IRS and FTB's secured claims. That is reason to deny confirmation. 11 U.S.C. § 1325(a)(6).

Additionally, the Motion in its entirety states:

TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:
DEBTOR HEREBY MOVES THIS COURT for an Order modifying her Chapter 13 Plan, filed on December 4, 2019. Debtor brings this motion pursuant 11 U.S.C. § 1323, which allows a plan to be modified before confirmation upon request of the debtor. As will be set forth herein, good cause exists to grant the instant motion, as Debtor has proposed a modification in good faith which complies with the requirements for confirmation. Thus, for the reasons set forth herein, Debtor asks that the Court grant the instant motion.

Motion, Dckt. 95. Federal Rule of Bankruptcy Procedure 9013 requires the motion to state the grounds for relief with particularity. This Motion does not explain why how the Plan is entitled to confirmation—it is merely a notice that confirmation is sought and a conclusion that the requirements are met.

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, Aileen Fermin Ambrosio ("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.