

**UNITED STATES BANKRUPTCY COURT**  
Eastern District of California

**Honorable Ronald H. Sargis**  
**Chief Bankruptcy Judge**  
**Sacramento, California**

**March 10, 2020 at 3:00 p.m.**

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1.	<a href="#"><u>20-20059-E-13</u></a> <a href="#"><u>DPC-1</u></a>	<b>MARK/KAORI MONTGOMERY</b> <b>Thomas Moore</b>	<b>OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK</b> <b>2-12-20 [15]</b>
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**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).**

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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 12, 2020. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

- A. The Debtors’ attorney is not entitled to attorney fees under the “no look” procedure.
- B. Debtors failed to include their middle names on their Petition.
- C. Debtors have failed to provide business documents.
- D. Debtors failed to provide a Schedule I attachment for property or business income.

## **DISCUSSION**

Trustee’s objections are well-taken.

### **Failure to File Business Documents Required by Schedule I**

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

### **Failure to File Documents Related to Business**

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

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

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

### **“No Look” Fee**

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

Examination of Debtors at the Meeting of Creditors held on February 6, 2020 revealed

Debtors had not seen nor reviewed their Chapter 13 Plan as required by the Statement of Rights and Responsibilities of Chapter 13 Debtors. The meeting was continued to March 5, 2020 to give Debtors the opportunity to review their paperwork. The meeting was concluded on March 5, 2020. Trustee has concerns regarding the level and quality of the work put into the case by the attorney. Attorney's Case No. 19-26402 had the same problem.

Trustee objects to the "no look" fee in this case based on the above. Thus, counsel's fees will be reviewed under the standard loadstar analysis.

### **Failure to Include Middle Names on Petition**

Debtors admitted at their Meeting of Creditors that they have middle names. Failure to provide their full name may prevent creditors from identifying these Debtors.

### **CONTINUED FIRST MEETING OF CREDITORS**

The Trustee's March 5, 2020 Docket Entry Report for the Continued First Meeting of Creditors states that the two Debtors appeared and an "Appearance Counsel" named Alden Knisbacher appeared. Debtor's counsel of record, Thomas A. Moore, was not at the continued First Meeting of Creditors.

The Rights and Responsibilities document signed by Debtor and their counsel, Thomas Moore, state various duties and obligation, including that Thomas Moore will "Appear at the § 341(a) meeting of creditors with the Debtor." Dckt. 1 at 2, Item 2 in the "**AFTER THE CASE IS FILED, THE ATTORNEY AGREES TO:**" section (emphasis in original).

Counsel for Debtor did not appear at the First Meeting of Creditors (§ 341(a) meeting).

On the Disclosure of Compensation filed by Debtor's counsel Thomas Moore, Mr. Moore states under penalty of perjury "I have not agreed to share the above-disclosed compensation with any other person unless they are members and associates of my law firm." Disclosure, Item 5, Dckt. 1. There is no indication that Alden Knisbacher (who is identified as an attorney in Oakland, California with the Knisbacher Law Offices) is a member of Thomas Moore's law firm, Roosevelt Law Center, PC, Santa Ana, California. <sup>FN. 1</sup>

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FN. 1. On the Roosevelt Law Center Webpage, Thomas Moore is identified as the managing attorney. Reference is made to there being "of counsel attorney's" [sic] across the nation to serve potential client's needs. <http://www.rooseveltlawcenterpc.com/attorney-bio/>

It does not appear that Alden Knisbacher is allowed to be paid for appearing at the § 341 meeting, Mr. Moore having stated under penalty of perjury that no fees for the services to be provided Debtor will be shared with anyone else.  
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At the hearing, the Trustee reported that when an attorney who did not appear to be the attorney of record or an attorney with the law firm of the attorney of record, Mr. Knisbacher advised the Trustee **XXXXXXXXXX**

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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on January 23, 2020. By the court's calculation, 47 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

**The Motion to Confirm the Amended Plan is denied.**

The debtor, Ross Joe Sanchez ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for a payment of \$3,700.00 for the first 12 months and \$3,775.00 thereafter, with a 0% dividend for unsecured claims totaling \$16,192.11. Amended Plan, Dckt. 30. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

## **CHAPTER 13 TRUSTEE'S OPPOSITION**

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on February 25, 2020. Dckt. 38. Trustee opposes confirmation of the Plan on the basis that:

- A. As proposed, Debtor's plan will exceed the permitted length of 60 months.

## **DISCUSSION**

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Chapter 13 Trustee, the Plan will complete in 77 months due

to differing arrearage and monthly mortgage payment amounts on Debtor's plan against Proof of Claim 3-1 filed by Navy Federal Credit Union. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

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, Ross Joe Sanchez ("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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 22, 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).

<p><b>The Motion to Confirm the Modified Plan is granted.</b></p>
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The debtor, Hector Arnoldo Cavazos (“Debtor”) seeks confirmation of the Modified Plan after a substantial decline in their delivery business, a vehicle accident, and subsequent purchase of a used vehicle. Declaration, Dckt. 93. The Modified Plan provides \$4,700.00 commencing January 25, 2020 for 41 months, and a 100% dividend to unsecured claims totaling \$31,287.51. Modified Plan, Dckt. 92. 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 24, 2020. Dckt. 97. Trustee opposes confirmation of the Plan on the basis that:

- A. Plan payments are not sufficient which will extend the plan to more than the sixty months permitted under the Bankruptcy Code.
- B. The documents filed have inconsistent dates.
- C. There are inconsistencies in the Section 7 provisions.

## DISCUSSION

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Chapter 13 Trustee, the Plan will not complete within 60 months because the records show that approximately \$201,900.00 The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

In Debtor's response, Debtor agrees to increase plan payments to \$4,850.00 beginning March 2020 in order for the plan to complete within the allotted time. Response, Dckt. 100.

Trustee is concerned that the documents filed are inaccurate or not current. The plan, amended schedules and declarations all have different dates between November and December 2019. Where as the documents were filed on January 2020.

Debtor also clarifies the date issues pointed out by Trustee. Debtor met with counsel on November 13, 2019 to review and sign the Plan as well as the Declaration and Amendments. Declaration, Dckt. 101. However, Debtor did not return the documents to Counsel until December 13, 2019 after discussing the Plan with his wife. *Id.* It was at this meeting that Debtor signed the amended income and expense schedules. *Id.* Counsel then filed these documents on January 22, 2020. *Id.*

Trustee points out that the total amount paid as of January 2020 is \$74,000.00, and not \$70,700.00 as stated under Section 7 of the proposed plan. Debtor's Plan provides for an additional tax payment for "2012" that seems to be a clerical error which should have said "2021." Finally, Debtor's plan provides for "monthly dividends commencing January 2019."

Debtor corrects the clerical error and that it should read: "Debtor shall contribute 2019, 2020, 2021 calendar years on or before June of each year." Additionally, Debtor clarifies that the updated dividends in the proposed plan are the ones to begin in January 2019.

The court finds that the Debtor has properly addressed Trustee's objections.

The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Hector Arnoldo Cavazos ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on January 22, 2020, as amended at the hearing **the monthly plan payment commencing with the March 2020 payment and for each month of the plan thereafter is \$4,850.00, that the tax contributions shall be for the 2019, 2020, and 2021 calendar years, the plan payments through January 2020 are**



\$74,000.00, and the updated dividends to begin with the January 2019 payment is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, which shall contain the above amendments, 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.

4. 20-20139-E-13      **TINA ANDRADE**      **OBJECTION TO CONFIRMATION OF**  
DW-1      **Peter Cianchetta**      **PLAN BY CONN APPLIANCES, INC.**  
2-20-20 [29]

**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).**

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on February 19, 2020. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

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<p><b>The Objection to Confirmation of Plan is sustained and the Plan is not confirmed.</b></p>
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Conn Appliances, Inc. d/b/a Conn's HomePlus ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

A. Debtor's plan does not include Creditor's debt.

## DISCUSSION

Creditor's objections are well-taken.

Creditor asserts a claim of \$5,294.69 in this case, of which \$2,776.00 is a secured claim. Proof of Claim 9. Creditor states the secured portion is secured by "household goods." *Id.* The Plan does not provide for Creditor.

Creditor alleges that the Plan is not feasible and violates 11 U.S.C. § 1325(a) because it contains no provision for payment of Creditor's debt.

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

- A. Provide a treatment that the debtor and creditor agree to (11 U.S.C. § 1325(a)(5)(A)),
- B. Provide for payment in full of the entire claim if the claim is modified or will mature by its terms during the term of the Plan (11 U.S.C. § 1325(a)(5)(B)), or
- C. Surrender the collateral for the claim to the creditor (11 U.S.C. § 1325(a)(5)(C)).

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

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

Notwithstanding the absence of a requirement in 11 U.S.C. § 1322(a) that a plan provide for a secured claim, the fact that this Plan does not provide for respondent Creditor's secured claim raises doubts about the Plan's feasibility. *See* 11 U.S.C. § 1325(a)(6). That is reason to sustain the Objection.

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 Conn Appliances, Inc. d/b/a Conn's HomePlus ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

5.     20-20139-E-13     **TINA ANDRADE**     **OBJECTION TO CONFIRMATION OF**  
          DPC-1           **Peter Cianchetta**       **PLAN BY DAVID P CUSICK**  
          4 thru 5                                   **2-18-20 [25]**

**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).**

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Local Rule 9014-1(f)(2) Objection—No 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 18, 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.

Upon review of the court's file, the one basis for the Objection, the order for the valuation of the secured claim not having been entered, has been resolved.

Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

<p><b>The Objection to Confirmation of Plan is overruled.</b></p>
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The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that:

- A.       The plan relies on pending motion to value a secured claim which if not granted will leave the plan underfunded.

## DISCUSSION

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of Mountain America Credit Union. The Motion was heard on February 25, 2020. Dckt. 32. Debtor's Motion was granted and Creditor's secured claim was valued at \$15,625.00 and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan.

Thus, the Objection is overruled.

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

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

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

**IT IS ORDERED** that the Objection is overruled, ~~and Tina Louise Andrade's ("Debtor") Chapter 13 Plan filed on January 10, 2020, is confirmed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

**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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on February 10, 2020. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

**The Motion to Value Collateral and Secured Claim of Carmax Business Services, LLC ("Creditor") is granted, and Creditor's secured claim is determined to have a value of \$6,585.00.**

The Motion filed by Sharon Fay Farve and John Delford Farve ("Debtor") to value the secured claim of Carmax Business Services, LLC ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 20. Debtor is the owner of a 2013 Ford Escape ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$6,585.00 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).

#### **AMENDED OPPOSITION**

On February 26, 2020, Creditor filed an Amended Opposition. Dckt. 33. Creditor first asserts that the value of its secured claim is determined as the amount that a retail merchant would charge for selling the vehicle, without deductions for costs of sale.

Creditor then states that such retail sale values can routinely be found in Market Reports (Fed. R. Evid. 803(17)) such as Kelly Blue Book and the NADA pricing guides. Creditor provides as Exhibit C a NADA report for a 2013 Ford Escape Utility 4D SE Eco Boost with a clean retail value of

\$10,825. Dckt. 29. This NADA report is authenticated in the Declaration of John H. Kim, Dckt. 28.

The value of the vehicle exceeding Creditor's claim of \$8,475.15, the full amount of its claim is asserted to be a secured claim in this case.

## **DISCUSSION**

Debtors, as the owners of the vehicle, state their opinion as to value, concluding that it is \$6,585.00. Declaration, Dckt. 20. As the owner, the Debtors' opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004). While evidence of value, Debtor's opinion is the most ephemeral evidence of value for the vehicle.

The Debtor does provide testimony as to the actual condition of the vehicle, factors that have to be taken into account for the retail value of this vehicle. Debtor testifies:

6. The following items are broken, damaged, and/or in need of repair:

- A. Oil stick broke off in oil hole
- B. Need brakes - makes loud sound when stopping
- C. Back fender cracked and off line
- D. Need tires - low air light comes on
- E. Windshield wipers need adjusting, even now one drags when in use
- F. Sensor light (204) stays on
- G. Needs oil change - oil light came on
- H. Needs tune up - car shakes when driving
- I. Light come on off and on

Declaration ¶ 6; Dckt. 20. The above clearly impact - reduce - the retail sale value of the Vehicle in determining the amount of Creditor's secured claim.

Creditor offers no analysis of the above conditions that need to be taken into account in reducing the \$10,825 "Clean Retail" selling price. Given the evidence of a "busted" back fender, need for new tires, oil change, tune up, and other routine maintenance, the broken oil stick (which would indicate that the oil level is not regularly checked), new brakes, a sensor light staying on, and an electrical issue, a \$4,000 +/- adjustment to \$6,585.00 is not unreasonable. Given the condition as testified by Debtor, it is questionable whether there would be a retail sales price by a merchant for this vehicle.

Beginning with Creditors NADA valuation of \$10,825 for clean retail value, the court determines that the retail value of the Vehicle with the above condition issues is \$6,585.00.

The lien on the Vehicle's title secures a purchase-money loan incurred on September 18, 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 \$8,457.15. Proof of Claim, No. 1. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of \$6,585.00, 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. <sup>FN. 1</sup>

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FN. 1. It is interesting that Creditor has chosen to undertake this fight over a \$1,890.15 dispute, given the age and evidence of condition of this vehicle. The reasonable costs and expenses in this litigation should well have exhausted such amount.

This Motion was filed on February 10, 2020. While in the Opposition Creditor states that it requests Debtor make the vehicle available for inspection, there is no indication that Creditor has so requested in a simple letter/email to Debtor's counsel or scheduled an inspection as discovery. While Creditor states that it wants Debtor to provide repair estimates, creditor CARMAX, which the court takes judicial notices extensively advertises its business of being a car dealer buying and selling used cars, apparently is ignorant of such repair costs. The court does not find such feigned ignorance credible.

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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 Sharon Fay Farve and John Delford Farve ("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 Carmax Business Services, LLC ("Creditor") secured by an asset described as 2013 Ford Escape ("Vehicle") is determined to be a secured claim in the amount of \$6,585.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$6,585.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

**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 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).**  
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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 12, 2020. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

- A. Debtors proposed plan relies on a Motion to Value Collateral not yet filed.
- B. Debtor's Plan is not signed by their attorney.

## **DISCUSSION**

### **Debtor's Reliance on Motion to Value Secured Claim**

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of Carmax Business Services, LLC. Debtor filed the Motion to Value the Collateral of Carmax Business Services, LLC on February 10, 2020. Dckt. 18. The Motion is scheduled to be heard on March 10, 2020.



The court has granted the Motion to Value.

### **Failure to Provide Signature**

Debtor's proposed Plan filed on January 31, 2020 was not signed by the attorney of record.

At the hearing, **XXXXXXXXXX**

~~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  
**XXXXXXXXXX**

**This Matter is Posted as a Tentative To Afford Counsel  
the Opportunity to Address Any Corrections in the  
Text of the Ruling or Order Granting the Motion.**

**No Appearance by Counsel for Debtor Required If  
There Are No Corrections to the Ruling or Order.**

**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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 8, 2020. By the court's calculation, 34 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

With respect to the short notice given, at the hearing, Counsel for Debtor requested and the court granted an oral motion to shorten time to that provided.

The Motion for Approval of Compromise has not been properly 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.

<b>The Motion for Approval of Compromise is granted.</b>
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**February 16, 2020 Order**

Pursuant to Order, the hearing on the Motion was continued to March 10, 2020 at 3:00 p.m. Dckt. 181. The court further ordered that Debtor shall file a supplement to the Motion stating with

particularity the grounds and supporting evidence on or before March 6, 2020. Debtor is required to serve the Motion only on the U.S. Trustee and the Chapter 13 Trustee. *Id.*

William Rudolph Battilana, II, Chapter 13 Debtor, (“Movant”) requests that the court approve a compromise and settle competing claims and defenses with Jillian Battilana, II c/o Sagaria Law, PC (“Settlor”). The claims and disputes to be resolved by the proposed settlement are Settlor’s Claim No. 12 for attorney’s fees and monetary sanctions totaling \$163,500.00 related to a dissolution proceeding pending in state court.

### **REVIEW OF MOTION**

Movant and Settlor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed in support of the Motion, Dckt. 178):

- A. Debtor has two possible claims against Settlor totaling \$29,000.00.
- B. One of them is listed as Item 33 in Debtor’s Schedule A/B for recovery of \$9,000 reimbursement of early distribution of community property paid from separate funds.
- C. The second possible claim is listed as Item 35 in, also in Debtor’s Schedule A/B, for \$20,000.00 in ex-wife’s attorney’s trust account paid by Debtor per state court order.
- D. Parties agree to reduce Claim No. 12 by \$20,000.00.
- E. Claim No. 12 is reduced to \$142,000.00.
- F. In exchange Debtor releases any right to the \$20,000.00 held by Settlor’s attorney and any right to recover the \$9,000.00 paid to Settlor as an early distribution of community property.

### **DISCUSSION**

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

- 1. The probability of success in the litigation;
- 2. Any difficulties expected in collection;
- 3. The complexity of the litigation involved and the expense, inconvenience, and delay necessarily attending it; and

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

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

### **Grounds Stated With Particularity For The Court To Consider**

Debtor's Motion is devoid of any grounds for this court to grant this motion— no grounds are stated as to how this is beneficial to the estate or the effect it would have upon creditors is presented.

Indeed, the Motion is one page of which the caption takes half a page and the rest are three sentences. The totality of grounds stated by Debtor:

Debtor, William Battilana, through his attorney, Gerald L. White, hereby requests approval of the Stipulation to Settle Claim No. 12 of Jillian Battilana. The Stipulation is filed herewith and a copy of Claim No. 12 is filed herewith as Exhibit A.

**WHEREFORE**, movant requests an order granting this motion approving the Stipulation to Settle Claim No. 12 of Jillian Battilana, and further:  
1. For such other relief as the Court deems just and proper.

Motion, Dckt. 175.

As the court reads the Motion, the grounds are -“The Debtor Wants It.”

There is nothing for the court to try and stretch to create the appearance that grounds were stated as required by the Federal Rules of Bankruptcy Procedure.

Further, no evidence is provided for the court to make the necessary findings and conclusions for such a settlement may be approved.

The court continued the hearing to afford Movant to file a supplement to the Motion and additional pleadings.

### **REVIEW OF SUPPLEMENTAL PLEADINGS**

Movant has provided a supplement to the Motion, which states the grounds with particularity for the requested relief. These grounds are summarized as:

- a. Jillian Battilana, the Debtor's ex-wife, (“Jillian”) for which there is a pending dissolution proceeding in the Superior Court.
- b. Jillian has filed a claim in this case for \$163,500.00, which is for attorney's fees in the dissolution action.

- c. Debtor's Mother has filed a claim in this case for \$187,063.00, which was for funds loaned to Debtor for attorney's fees in the dissolution action.
- d. Debtor has identified two possible claims against Jillian on Schedule A/B. One for \$9,000.00 and the other for \$20,000.00.
- e. Debtor now believes that the \$9,000 claim is of questionable success. If the dissolution action is not settled, much of the \$20,000 would be consumed by future attorneys' fees. The \$20,000.00 is held in Jillian's attorney's trust account specifically for payment of Jillian's future attorney's fees.
- f. The settlement provides for the \$20,000.00 to be applied dollar for dollar against Jillian's claim in this bankruptcy case, reducing it to \$143,500.00. (The Supplemental Pleading notes that the Stipulation itself contains a typographical error, resulting from a mathematical error in subtracting \$20,000.00 from Jillian's \$163,500.00 claim.)

## **DECISION**

Upon weighing the factors outlined in A & C Props and Woodson, the court determines that the compromise is in the best interest of the creditors and the Estate. By this settlement, Debtor is able to maximize the benefit in the use of the monies, and reduces further legal expenses for both the Debtor and his ex wife.

The Motion is granted.

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

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

The Motion to Approve Compromise filed by Name of Movant, [the Chapter xx Trustee / Debtor in Possession / Chapter 13 Debtor], ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion for Approval of Compromise between Movant and Name of Settling Person(s) ("Settlor") is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Stipulation to Settle Claim No. 12. of Jillian Battilana, Dckt. 178, with dollar amount of Jillian Battilana's claim reduced to \$143,500.00 after getting credit for the \$20,000.00 in her attorney's trust account (the Settlement containing a typographical error in stating the amount of such claim after the credit).

**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).**

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 24, 2020. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

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

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**The Motion to Extend the Automatic Stay is granted.**

Patricia C. Shields ("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. 17-26025) was dismissed on May 1, 2019, after Debtor failed to make plan payments. *See* Order, Bankr. E.D. Cal. No. 17-26025, Dckt. 81, May 1, 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 that the previous case was dismissed because she became delinquent in plan payments after she, and her partner who contributed financially to the plan, encountered physical injuries which required surgery for both. Debtor states that although she must continue medical treatment, she has a full training schedule working at DFX Pilates and with private individuals. Her partner has recovered from his surgeries and has returned to full-time work.

Upon motion of a party in interest and after notice and hearing, the court may order the

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

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

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

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

Debtor has sufficiently demonstrated the case was filed in good faith and 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 Patricia C. Shields (“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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, creditors, and Office of the United States Trustee on January 27, 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 denied.**

The debtor, Kela Lorrae Belfield ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for monthly payments of \$1,698.78 for 60 months and a 48% dividend for unsecured claims totaling \$186,388.00. Amended Plan, Dckt. 50. 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 26, 2020. Dckt. 56. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor is delinquent in plan payments.

#### **DISCUSSION**

Debtor is \$2,550.38 delinquent in plan payments, which represents multiple months of the \$1,698.78 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).



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

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Kela Lorrae Belfield (“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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 7, 2020. By the court's calculation, 63 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, Fred Kendle ("Debtor") seeks confirmation of the Modified Plan because it accounts for all timely filed proofs of claims, and permits him to cure his delinquency. Declaration, Dckt. 86. The Modified Plan provides for monthly payments of \$1,741.00 for months 30 through 60, and a 0% dividend for unsecured creditors totaling \$41,981.03. Modified Plan, Dckt. 83. 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 24, 2020. Dckt. 91. Trustee opposes confirmation of the Plan on the basis that:

- A. Additional provisions propose to add post-petition arrears that appear inaccurate.

## DISCUSSION

### Inaccurate Post-Petition Arrearage

Trustee asserts Section 7.05 of the additional provisions in the proposed Plan adds \$1,599.00 in post-petition arrears for Specialized Loan Servicing, LLC.

The Trustee states that for Specialized Loan Servicing, LLC all 29 post-petition payments have been made under the Plan by the Trustee to these creditors.

Section 7.06 regarding Citibank, N.A., adds \$897.64 in post-petition arrears.

The Trustee states that if Debtor defaults in the February 2020 payment, then \$673.23 would be the correct amount.

Section 7.07 regarding Bank of America, N.A. adds \$633.56 in post-petition arrears.

The Trustee states that if the Debtor defaults in the February 2020 payment, then \$644.27 would be the correct amount.

The fact that this Plan provides inaccurate amounts for post-petition arrears raises doubts about the Plan's feasibility. *See* 11 U.S.C. § 1325(a)(6).

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

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Fred Kendle ("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.

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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 7, 2020. By the court's calculation, 63 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

**The Motion to Confirm the Amended Plan is denied.**

The debtor, Maisha Nyota Anderson ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for monthly payments of \$714.00 for 60 months and a 0% dividend for unsecured claims totaling \$36,678.00. Amended Plan, Dckt. 24. 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 26, 2020. Dckt. 37. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor is delinquent in plan payments.

## DISCUSSION

The Chapter 13 Trustee asserts that Debtor is \$2,142.00 delinquent in plan payments, which represents multiple months of the \$714.00 plan payment. According to the Chapter 13 Trustee, the Plan in § 2.01 calls for payments to be received by the Chapter 13 Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

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, Maisha Nyota Anderson (“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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on January 20, 2020. By the court's calculation, 50 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

**The Motion to Confirm the Amended Plan is denied.**

The debtor, Rhiannon Winnoma Nichols ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for 12 monthly payments of \$425.00 commencing on January 25, 2020, 12 monthly payments of \$600.00 commencing on January 25, 2021, 22 monthly payments of \$825.00 commencing on January 25, 2022, four (4) annual tax refund payments of \$1,200.00, and a 0% dividend for unsecured claims totaling \$29,001.85. Amended Plan, Dckt. 51. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

#### CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on February 25, 2020. Dckt. 79. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor is delinquent in plan payments.
- B. Debtor's plan relies on a pending motion to value collateral.

## DISCUSSION

### Debtor's Reliance on Motion to Value Secured Claim

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of Carfinance Capital, LLC ("Creditor"). The Motion was heard on February 25, 2020. Dckt. 84. Debtor's Motion was granted and Creditor's secured claim was valued at \$7,500.00. The balance of the claim is a general unsecured claim to be paid through the bankruptcy plan.

As noted by Debtor's Reply, Dckt. 85, the Motion to Value Collateral of Carfinance Capital, LLC was heard and granted on February 25, 2020.

### Delinquency

The Chapter 13 Trustee asserts that Debtor is \$425.00 delinquent in plan payments, which represents one month of the \$425.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

According to Debtor's Reply, Debtor will be current before the hearing.

Unfortunately for Debtor, a promise to pay does not resolve the objection.

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, Rhiannon Winnoma Nichols ("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 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).**

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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 17, 2020. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

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

**The Motion to Value Collateral and Secured Claim of Compass Bank ("Creditor") is granted, and Creditor's secured claim is determined to have a value of \$11,550.00.**

The Motion filed by Costancio Vallecera Bernalles ("Debtor") to value the secured claim of Compass Bank ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 10. Debtor is the owner of a 2015 Jeep Patriot ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$11,550.00 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 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 \$12,000.00. Declaration, Dckt. 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 \$11,550.00, 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 Costancio Vallecera Bernalles (“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 Compass Bank (“Creditor”) secured by an asset described as 2015 Jeep Patriot (“Vehicle”) is determined to be a secured claim in the amount of \$11,550.00, 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 \$11,500.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

## **The Appearance of Nima Vokshori, Counsel for Debtor Required for March 10, 2020 Hearing**

### **Telephonic Appearance Permitted for March 10, 2020 Only**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 24, 2020. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

The Motion to Impose 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, -----

-----.

<b>The Motion to Impose the Automatic Stay is denied.</b>
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Lee Ann Newton ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) imposed in this case. This is Debtor's third bankruptcy petition pending in the past year with the prior two cases having been dismissed. Debtor's prior bankruptcy cases (Nos. 18-23750 and 19-24419) were dismissed on May 31, 2019, and January 16, 2020, respectively. *See* Order, Bankr. E.D. Cal. No. 18-23750, Dckt. 57, May 31, 2019; Order, Bankr. E.D. Cal. No. 19-24419, Dckt. 49, January 16, 2020. Therefore, pursuant to 11 U.S.C. § 362(c)(4)(A)(I), the provisions of the automatic stay did not go into effect upon Debtor filing the instant case.

Here, Debtor states that the instant case was filed in good faith and explains that the previous cases were dismissed because she was unable to remain current on plan payments. Under Case No.18-23750, Debtor was unable to make payments because as a teacher her income is significantly reduced during the summer months. Under Case No. 19-24419, Debtor lost tenants due to nonpayment and was unable to cure the delinquency in plan payments before the hearing to dismiss her case.

## APPLICABLE LAW

When the stay has not gone into effect pursuant to 11 U.S.C. § 362(c)(4), a party in interest may request within 30 days of filing that the stay take effect as to any or all creditors (subject to such conditions or limitations as the court may impose), after notice and a hearing, only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed. 11 U.S.C. § 362(c)(4)(B).

For purposes of subparagraph (B), a case is presumptively filed not in good faith as to all creditors if:

(I) 2 or more previous cases under this title in which the individual was a debtor were pending within the 1-year period;

(II) a previous case under this title in which the individual was a debtor was dismissed within the time period stated in this paragraph after the debtor failed to file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney), failed to provide adequate protection as ordered by the court, or failed to perform the terms of a plan confirmed by the court; or

(III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under this title, or any other reason to conclude that the later case will not be concluded, if a case under chapter 7, with a discharge, and if a case under chapter 11 or 13, with a confirmed plan that will be fully performed; . . .

11 U.S.C. § 362(c)(4)(D).

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.

## **CREDITOR’S OPPOSITION**

On March 2, 2020, Wells Fargo Bank, N.A. (“Creditor”) filed an opposition to Debtor’s motion to impose the automatic stay. Dckt. 25. Creditor opposes the motion on the basis that:

- A. Debtor’s plan is speculative and not feasible.
- B. Creditor has filed a proof of claim in this bankruptcy case documenting a pre-petition delinquency of \$31,052.97, and Debtor’s Plan only provides for a cure of \$19,985.00 to be paid to Creditor.
- C. Debtor has not provided sufficient evidence to show that she will receive funds from her brother during the summer months.
- D. Debtor’s past history of relying on rental income from living in a roommate situation is inherently unstable to fund the Plan.

## **DISCUSSION**

Debtor’s prior cases were dismissed after Debtor became delinquent in plan payments and failed to file a new plan (No. 18-23750) and after Debtor became delinquent in plan payments (No. 19-24419).

Debtor’s declaration states that she has established an arrangement with her brother to ensure payment of her mortgage during the summer months. She will work for her brother at his out-of-state properties during the summer months and in exchange he will make her mortgage payments over those summer months. Unfortunately, there is no declaration from her brother confirming this arrangement.

Debtor states under penalty of perjury that she now has reliable tenants and believes she can stay current on her payments for the duration of the plan. Under Debtor’s first case, Case No. 18-23750, Debtor listed \$500.00 net income from rental property. Case No. 18-23750, Dckt. 11.

In her second, Case No. 19-24419, Debtor also listed \$1,200.00 net income from rental property. Case No. 19-24419, Dckt. 11.

As to the instant case, Debtor now lists \$1,300.00 net income from rental property. Dckt. 11. The court is not sure that this portion of her income is reliable. No rent agreements were filed in support of this motion. Debtor does not state if these are year contracts or month to month. Since Debtor’s proposed plan provides for monthly payments of \$2,165.00, it seems Debtor would find herself in the same problem of being unable to make plan payments if her real property income is reduced.

In considering the Declaration, Debtor states that though she made the promise to make monthly payments, she could not because her income is reduced in the summer because she is a teacher.

She does not testify that this was unexpected, unknown, or something that a teacher would not expect. Dckt. 19.

The court considers the financial information provided by Debtor in this case. The proposed Chapter 13 Plan requires monthly payments of \$2,165.00. Plan ¶ 2.01; Dckt. 13. On Schedule J Debtor computes that she has \$2,598.68 of monthly net income, which she presents as her projected disposable income. Dckt. 11 at 26.

Beginning with Schedule I, Debtor lists having \$2,633.42 as gross wage income. Dckt. 11 at 23-24. It is not clear if this is a twelve month average or just for nine months, the school year, and that it is \$0.00 for three months. Debtor then lists having \$1,300 a month in monthly net income from rental of property. *Id.* Debtor lists having monthly income (after a deduction of (\$248.11) for taxes, (\$184.34) for retirement, and (\$38.30) for union dues) of \$3,462.67.

Going to Schedule J, Debtor states that she is a family unit of one person. *Id.* at 25-26. She states that her total expenses for a month are only (\$863.99). *Id.* at 26. Looking at the expenses, the following amounts, or lack of amounts, cause the statement of expenses made under penalty of perjury to not be credible:

A. Home Maintenance, Repair, and Upkeep.....(\$0.00)

It is not credible that during the five years of a bankruptcy plan that Debtor will not have \$1 of home maintenance, repair, and upkeep expenses. This is even less credible where the Debtor is running a housing rental business to generate income that she uses to justify the proposed Plan.

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

It is not credible that for food for herself and housekeeping supplies for a home in which Debtor is operating as a housing rental business for third-parties that this number would be this low. If there is (\$100.00) for the housekeeping expenses, that would leave \$200 for food. In a thirty-day month, that would provide Debtor with only \$2.22 for each meal.

C. Clothing and Laundry.....(\$0.00)

It is not credible that for the five years of the Plan that Debtor will not need to purchase any clothing or have any laundry expense.

D. Personal Care Products and Services.....(\$0.00)

It is not credible that Debtor will not have to buy any personal care products or services over five years of a bankruptcy plan.

E. Medical and Dental Expenses.....(\$0.00)

It is not credible that Debtor will not have any medical or dental expenses, not have any co-payments, not purchase any bandages, aspirin or other over-the-counter medication, or not have any illness.

F. Transportation Expenses.....(\$30.00)

It is not credible that Debtor's transportation expenses, such as routine maintenance, repairs, gas, vehicle registration, bus fare and the like are only (\$30.00) a month. Debtor lists having a 2015 Ford Focus on Schedule A/B and that she pays (\$99.00) a month on vehicle insurance expense.

G. Entertainment and Recreation.....(\$0.00)

It is not credible that Debtor would have no recreation or entertainment expense over a five year plan period - not one movie, one night out, one lunch at a restaurant, or other activity.

H. Debtor does not list any expenses for running her rental business such as: liability insurance, payment of registration, taxes, and fees for operating a residential housing facility, and taxes for having \$15,000 in net rental income annually.

In addition to not being credible, it appears that Debtor and Debtor's counsel have constructed a knowingly false statement under penalty of perjury. This concerns the court greatly, not only as to Debtor, but Debtor's counsel who is admitted to practice in this Federal District, in addition to her standing with the State Bar of California.

In addition to being false statements under penalty of perjury, it also violates the certifications of both the Debtor and Debtor's counsel arising under Federal Rule of Bankruptcy Procedure 9011. Merely because a client tells an attorney that he or she is willing to make false statements under penalty of perjury, the attorney is not permitted to facilitate such false statements – no matter how much the client wants to make misrepresentations to the court.

Debtor has not sufficiently rebutted the presumption of bad faith under the facts of this case and the prior cases for the court to impose the automatic stay. In fact, the information provided under penalty of perjury by Debtor and Debtor's counsel demonstrates that this third case is being filed in bad faith.

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 Impose the Automatic Stay filed by Lee Ann Newton ("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.

**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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 21, 2020. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

<p><b>The Motion for Retroactive Authorization to Incur Debt is denied.</b></p>
---

David Castillo and Christina Akiko Castillo ("Debtor") seeks **retroactive permission** to purchase a 2017 Hyundai Santa Fe, with a total purchase price of \$19,826.73 and monthly payments of \$421.30 to Future Nissan over 72 months with a 14.95% fixed interest rate.

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at \*1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." FED. R. BANKR. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

Debtor does not address the reasonableness of incurring debt with the substantial interest charge—14.95%. This appears to be a statement by the lender that it anticipates a default and seeks to extract as much interest as possible before default and having to repossess the vehicle.

In Debtor's Reply, Debtor argues that it can be difficult to qualify for low-interest rate

financing due to a number of factors including credit score. Debtor adds that they are current under the Plan.

The Motion clearly states that Debtor has been approved for the purchase. Even though the Purchase and Sale Agreement is dated in January 2020 and the first payment due January 13, 2020, it appears that the denial of this Motion will afford the Debtor the opportunity to go back to the lender and negotiate commercially reasonable interest terms.

## **DECISION**

No further documents, testimony, or other evidence have been provided by Movant.

The court will do Debtor the favor of denying the Motion. There being no authorization for the transaction, Debtor can return the vehicle, recover any payments made, and seek to purchase a vehicle on commercially reasonable terms.

The lender necessarily had to know of this bankruptcy case. In addition to Debtor necessarily accurately disclosing it as part of the credit application, the existence of the Chapter 13 case should also appear on the consumer credit report that a lender would necessarily obtain in making a loan when acting in a commercially reasonable manner.

At the hearing, **XXXXXXXXXX**

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 for Authorization to Incur Debt, retroactively, filed by David and Christina Castillo, the Debtors, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is denied.



**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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 21, 2020. By the court's calculation, 49 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).

<b>The Motion to Confirm the Modified Plan is denied.</b>
---

The debtor, David Castillo and Christina Akiko Castillo ("Debtor") seek confirmation of the Modified Plan because they had issues with their vehicle which required them to use plan payments to purchase a new vehicle and are now dealing with costs and expenses related to a lawsuit in probate court in Los Angeles. Declaration, Dckt. 51. The Modified Plan provides monthly plan payments of \$2,700.00 for 41 months and a 72% dividend to unsecured claims totaling \$117,979.54. Modified Plan, Dckt. 52. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

#### **CHAPTER 13 TRUSTEE'S**

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on February 24, 2020. Dckt. 66. Trustee opposes confirmation of the Plan on the basis that the plan was not filed in good faith, specifically alleging:

- A. Debtor chose to purchase a new vehicle.
- B. Modified plan modifies the rights of the creditors with unsecured claims.

- C. Supplemental Schedule J does not include costs and expenses incurred by Debtor.
- D. Declaration in support of confirmation is inconsistent with the proposed plan.

## DISCUSSION

Trustee's objections are well taken.

As to the Motion to Incur Debt, Debtor's hearing was continued to the same date as the instant motion, March 10, to give Debtor the opportunity to go back to the lender and negotiate commercially reasonable interest terms.

Debtor has not filed with the court any supplemental pleadings concerning the unauthorized purchase of the 2017 Hyundai Santa Fe for which the creditor required the payment of 14.95% interest (which indicates the commercial decision that Debtor is a high risk, likely to default, borrower).

Debtor filed a response on March 3, 2020. Dckt. 70. Debtor starts with saying that when the Chapter 13 Plan providing for a 100% dividend was confirmed, Debtor listed only \$84,791.00 as the amount of unsecured claims.

Debtor then states that on the Form 122C-2, Calculation of Disposable Income, would be \$1,301.35 for general unsecured claims. Dckt. 1 at 51-57. Therefore, multiplying that by 60 months, Debtor is required to only fund the plan with \$78,081.00 for creditors with general unsecured claims. Under the proposed modification, Debtor will provide for payment of \$84,791.00, which is not enough to pay a 100% dividend because the amount of claims have come in higher at (\$117,9790.54).

In addition to Form 122C-2, the court looks at Schedules I and J, by which Debtor states actual income and expense information under penalty of perjury.

Beginning with Supplemental Schedule I, Debtor David Castillo states having wage income of \$6,252.66 a month as a teacher. From this he has deductions for taxes, retirement contributions, and union dues. Dckt. 5917 at 13-14.

For Debtor Christina Castillo, she is not employed, but states that she is retired, with \$4,723.67 in CALPERS retirement income. In addition to income tax deductions, Debtor Christina states that she is forced to make a mandatory retirement contribution of (\$634.16) from her monthly retirement income of \$4,631.04. *Id.*

At the hearing, Debtor's counsel explained that Debtor Christina Castillo is required to make a mandatory retirement contribution of (\$634.16) a month from her retirement income, stating

XXXXXXXXXX

Debtor also states that Debtor's 33 year old son makes a \$100 a month contribution "towards household food expense."

The total Combined Monthly Income stated for Debtor is \$8,186.15. *Id.*

On Supplemental Schedule J, Debtor lists having one dependent, a 33 year old son. As shown on Supplemental Schedule I, the 33 year old son contributes \$100 a month for household food expenses. In the evidence presented for confirmation, nothing is provided as to the 33 year old son being a dependant and the son's income, benefits, or other support received.

On Supplemental Schedule J Debtor states that Debtor has (\$5,485.30) in expenses, yielding \$2,700.85 in Monthly Net Income, which would appear to be presented as the projected disposable income. *Id.* at 6-7.

Moreover, Debtor must file an Amended Schedule J to provide for the legal costs and travel expenses related to the probate lawsuit on Debtor's Declaration in support of the proposed plan.

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

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, David Castillo and Christina Akiko Castillo ("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.

# FINAL RULINGS

18. [19-25028-E-13](#) LARA MADDOX MOTION TO CONFIRM PLAN  
[LBG-1](#) Lucas Garcia 1-22-20 [35]

**Final Ruling:** No appearance at the March 10, 2020 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 22, 2020. By the court's calculation, 48 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

**The Motion to Confirm the Amended Plan is granted.**

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Lara June Maddox ("Debtor") has provided evidence in support of confirmation. No opposition to the Motion has been filed by the Chapter 13 Trustee, David Cusick ("Trustee"), or by creditors. 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, Lara June Maddox ("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 22, 2020, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

19. [20-20046-E-7](#)      **ANDRE HUDDLESTON**      **OBJECTION TO CONFIRMATION OF**  
[DPC-1](#)      **Peter Macaluso**      **PLAN BY DAVID P. CUSICK**  
2-12-20 [\[35\]](#)

**Final Ruling:** No appearance at the March 10, 2020 hearing is required.  
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Local Rule 9014-1(f)(2) Objection.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney, on February 12, 2020. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

**The Objection to Confirmation is overruled as moot.**

The Chapter 13 Trustee, David Cusick (the "Trustee"), objects to confirmation of the debtor, Andre Michael Huddleston, Sr.'s ("Debtor") Chapter 13 plan. Debtor filed a Notice of Conversion on February 26, 2020, however, converting the case to a proceeding under Chapter 7. Dckt. 46. Debtor may convert a Chapter 13 case to a Chapter 7 case at any time. 11 U.S.C. § 1307(a). The right is nearly absolute, and the conversion is automatic and immediate. FED. R. BANKR. P. 1017(f)(3); *In re Bullock*, 41 B.R. 637, 638 (Bankr. E.D. Penn. 1984); *In re McFadden*, 37 B.R. 520, 521 (Bankr. M.D. Penn. 1984). Debtor's case was converted to a proceeding under Chapter 7 by operation of law once the Notice of Conversion was filed on February 26, 2020. *McFadden*, 37 B.R. at 521.

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

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

The Objection to Confirmation filed by the Chapter 13 Trustee, David

Cusick (the “Trustee”), having been presented to the court, this Case having been converted to one under Chapter 7, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection is overruled as moot.