UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

March 30, 2021 at 2:00 p.m.

1.	**21-20109-E-13** **DPC-1** **1 thru 2**	**LARRY/DEBRA JACKSON** **Rober Huckaby**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **3-10-21 [34]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on March 10, 2021. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. Debtor has not provided business documents.

B. Debtor has failed to provide Schedule I related documents.

DISCUSSION

Trustee's objections are well-taken.

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.

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.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

2.	**21-20109-E-13 JHK-1**	**LARRY/DEBRA JACKSON Robert Huckaby**	**OBJECTION TO CONFIRMATION OF PLAN BY SANTANDER CONSUMER USA INC. 2-17-21 [19]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and parties requesting special notice, and Office of the United States Trustee on February 17, 2021. By the court's calculation, 41 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

Santander Consumer USA Inc. ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

A. The proposed Plan fails to provide for Creditor's Secured Claim, for which a 2009 "Chevrole" Traverse is identified as the collateral. Proof of Claim 2-1.

DISCUSSION

Creditor's objections are well-taken.

Failure to Provide for a Secured Claim

Creditor asserts a claim of $8,201.51 in this case. Debtor's Schedule D does not list Creditor's claim. Moreover, the Plan fails to provide for treatment of this claim.

Creditor alleges that the Plan is not feasible and violates 11 U.S.C. § 1322(b)(2) because it contains no provision for payment of Creditor's matured obligation, which is secured by Debtor's residence. *See* 11 U.S.C. § 1325(a)(6).

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

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

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

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

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

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

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

When a plan does not provide for a secured claim, the only 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.

Motion for Relief from the Stay

A review of the Court's docket shows Creditor filed a Motion for Relief from the Automatic Stay on March 9, 2021. Dckt 32. That motion is set for hearing in this court on April 20, 2021, at 1:30 p.m. In the Motion it is stated that Debtor's counsel notified Creditor that Debtor intends to surrender the vehicle. Even if surrendered, it is still the property of Debtor and the Plan does not provide for such surrender.

Trustee's Objection to Debtor's Plan has been sustained. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). Creditor's Objection is sustained, and the Plan is not confirmed on this ground as well.

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 Santander Consumer USA Inc. ("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.

3.	**21-20814-E-13** **PGM-1**	**ARLEANER COLLINS** **Peter Macaluso**	**MOTION TO EXTEND AUTOMATIC STAY** **3-14-21 [10]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on March 15, 2021. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

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

The Motion to Extend the Automatic Stay is granted.

Arleaner Collins ("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. 17-27297) was dismissed on March 6, 2021, after Debtor became delinquent $4,530.00 in plan payments, representing multiple months of the $755.00 plan payment. *See* Order, Bankr. E.D. Cal. No. 17-27297, Dckt. 96, March 6, 2021. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because Debtor had a medical issue "which caused [her] to miss [her] plan payments because the insurance went to $500.00 for several months before the insurance kicked and now is $107.00, which will allow [her] to make the plan payments." Declaration, Dckt. 13, ¶ 2.

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.

Trustee's Response

Trustee filed a Response on March 19, 2021, stating no opposition to the extension of the stay. Dckt. 18. Trustee does note two matters the Court may want to consider with this Motion:

1. Debtor's joint account with attorney. Schedule A/B does not show Debtor is in possession of the $5,725.00 required for the arrangement. Also, Trustee is not certain such arrangement is appropriate under California Rule of Professional Conduct 1.8.1.

2. Debtor's 2020 property taxes in the amount of $4,565.86 may be pre-petition debt that should be included in Debtor's plan. Where Debtor provides for other tax debt in the amount of $16,518.30 in her pending plan, this debt may be included in a proof of claim.

It appears that Debtor's counsel has taken on a separate fiduciary role of being Debtor's money manager. This may create a conflict with him serving as the Debtor's attorney - which attorney has the fiduciary duty under federal law to the Debtor of overseeing the other fiduciaries working for Debtor.

As to who will be substituting in as counsel for the Debtor, at the hearing **xxxxxxx**

It further appears that the tax arrearage is the amount provided for in Class 2 of the Plan, an

advance by the creditor holding the reverse mortgage. The Debtor's testimony in support of confirmation includes:

> Additionally, the property taxes that have arose because I have a reverse mortgage, as the City charged me a large amount for being absent and thinking I abandoned the house, which I was in disputed with them, but since the mortgage company paid it, and then I got sick with the blood clot that the insurance did not cover but is covering now allowing me to make the required payments.

Declaration, p. 2:3-9; Dckt. 13.

The court is not aware of the City of Sacramento charging "large amounts for being absent" from one's property. If this is an incorrect assessment and collection of an obligation not owed by Debtor, then it is not proper to "just pay it" at the cost to other creditors and the Debtor. It may be that Debtor's ultimate attorney who will represent her (and not serve as her financial agent) can address this with the City of Sacramento.

At the hearing Counsel for Debtor xxxxxxxx

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

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

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

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

4. **21-20920-E-13** **TONI HAMILTON** **MOTION TO VALUE COLLATERAL OF**
RJ-1 **Richard Jare** **CARMAX BUSINESS SERVICES, LLC**
4 thru 5 **(DBA CARMAX AUTO FINANCE)**
3-16-21 [11]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, Creditor, and Office of the United States Trustee on March 16, 2021. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The hearing on the Motion to Value Collateral and Secured Claim of CarMax Business Services, LLC, (dba CarMax Auto Finance) ("Creditor") is continued to 2:00 p.m. on xxxxxxx, 2021.

The Motion filed by Toni Y. Hamilton ("Debtor") to value the secured claim of CarMax Business Services, LLC, (dba CarMax Auto Finance) ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 13. Debtor is the owner of a 2015 Ford Escape ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $8000.00 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 in June 2018, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor that according to

Debtor has a balance of approximately $18,000 and referring to Creditor's Proof of Claim filed in her prior bankruptcy case. Debtor's Declaration, Dckt. 13. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized.

Trustee's Response

Chapter 13 Trustee David Cusick filed a Response on March 19, 2021. Dckt. 20. Trustee brings to the Court's attention that Debtor has not filed Schedules to date, and therefore Debtor's ownership interest in the vehicle is not clear.

Proof of Claim

Creditor filed Proof of Claim 1-1 on March 19, 2021. Proof of Claim, No. 1-1. Creditor states a secured claim in the amount of $17,389.00 and values the property at $12,600.00. *Id.*

While Proof of Claim No. 1 is *prima facie* evidence of a claim, the Creditor has the actual burden of proof on the claim if that prima facie evidence is rebutted. It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the *prima facie* validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

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

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

Proof of Claim No. 1-1 in which it is asserted that the claim is a secured claim in the amount of $12,600.00 is based upon that amount being stated in the Proof of Claim. The Proof of Claim is signed by Yuri McMutry, a Bankruptcy Specialist of CarMax Auto Finance. As opposed to the books and records of CarMax Auto Finance in which the amount of the debt and the various transactions are maintained, there is nothing to indicate a high probative value as to the statement of the value of this six year old 2015 Ford Escape model.

Debtor, as the owner of the vehicle, states her opinion as to value, concluding that it is $8,000. Declaration, Dckt. 13. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004). While Debtor could have made more of an effort in her testimony to describe the condition of the vehicle, any deferred maintenance, damage, required clean-up, such lack of attention to her testimony does not render it irrelevant or not probative. It is akin to Creditor not bothering to include a KBB or NADA authenticated valuation with the Proof of Claim, which would enhance the probative value to be overcome.

Regarding Trustee's concerns that Debtor has not filed Schedules with the court, as of the court's preparation of this pre-hearing disposition Debtor has failed to file Schedules. While the Debtor was focused on getting this Motion out, Debtor has neglected to provide the necessary information to get the Schedules and Statement of Financial Affairs filed.

The court notes that Debtor has had a recent Chapter 13 case, 19-25084, which was filed on August 13, 2019 and dismissed on March 5, 2021. That case was dismissed due to Debtor being more than six months in default in plan payments. 19-25084; Civil Minutes, Dckt. 72. In the prior case, Debtor acknowledge that the vehicle had a value of $17,605 and provide for paying the fair value with five percent interest over the five years of the plan. *Id.*; Plan § 3.08 and § 7.01, Dckt. 12.

At the hearing Debtor's Counsel xxxxxxxx

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Value Secured Claim filed by Toni Y. Hamilton, the Debtor, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearing on the Motion is continued to 2:00 p.m. on **xxxxxxx**, 2021.

5. **21-20920-E-13 RJ-2** **TONI HAMILTON** **Richard Jare** **MOTION TO VALUE COLLATERAL OF AMERICAN CREDIT ACCEPTANCE, LLC** **3-16-21 [15]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on March 16, 2021. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The hearing on the Motion to Value Collateral and Secured Claim of American Credit Acceptance, LLC ("Creditor") is continued to 2:00 p.m. on xxxxxxx, 2021.

The Motion filed by Toni Y. Hamilton ("Debtor") to value the secured claim of American Credit Acceptance, LLC ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 17. Debtor is the owner of a 2013 Chrysler 200 ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $3,400.00 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 in April 2016, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $24,355.00. Declaration, Dckt. 17. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized.

Trustee's Response

Chapter 13 Trustee David Cusick filed a Response on March 19, 2021. Dckt. 22. Trustee brings to the Court's attention that Debtor has not filed Schedules to date, and therefore Debtor's ownership interest in the vehicle is not clear. Additionally, Creditor has not filed a claim to date.

Regarding Trustee's concerns that Debtor has not filed Schedules with the court, as of the court's preparation of this pre-hearing disposition Debtor has failed to file Schedules. While the Debtor was focused on getting this Motion out, Debtor has neglected to provide the necessary information to get the Schedules and Statement of Financial Affairs filed.

The court notes that Debtor has had a recent Chapter 13 case, 19-25084, which was filed on August 13, 2019 and dismissed on March 5, 2021. That case was dismissed due to Debtor being more than six months in default in plan payments. 19-25084; Civil Minutes, Dckt. 72. In the prior case, Debtor acknowledge that the vehicle had a value of $3,600 and provide for paying the fair value with five percent interest over the five years of the plan. *Id.*; Plan § 3.08 and § 7.01, Dckt. 12.

At the hearing Debtor's Counsel xxxxxxxx

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Value Secured Claim filed by Toni Y. Hamilton, the Debtor, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearing on the Motion is continued to 2:00 p.m. on **xxxxxxx**, 2021.

6. **19-25021-E-13 MMP-4 6 thru 8** | **STEPHEN/KAREN GINGOLD** **Michele Poteracke** | **MOTION TO MODIFY PLAN 2-22-21 [105]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 22, 2021. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is xxxxx.

The debtor, Stephen Anthony Gingold and Karen Michelle Gingold ("Debtor") seek confirmation of the Modified Plan for the following reasons:

1. In May 2020, in response to COVID-19, Mr. Gingold's employer initiated monthly one-week furloughs which affected Debtor's income.

2. Debtor's home required urgent repairs.

3. A family vehicle was totaled in an accident.

4. Debtor received an unexpected property tax assessment that is currently in dispute.

Declaration, Dckt. 109. The Modified Plan provides payments of $3,845.00 for 42 months, and a 0 percent dividend to unsecured claims totaling $19,741.26. Modified Plan, Dckt. 107. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S NON-OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an statement of Non-Opposition on March 12, 2021. Dckt. 118. Trustee does not oppose confirmation of the Plan and states that Debtor is current under the proposed plan. *Id*.

CREDITOR'S OPPOSITION

Provident Trust Group, successor to Polycomp Trust Company, Custodian FBO Brian L. Kraft IRA ("Creditor") holding a secured claim filed an Opposition on March 16, 2021. Dckt. 120. Creditor opposes confirmation of the Plan on the basis that:

A. The plan is not feasible.

B. The plan is not proposed in good faith.

C. The plan fails to solve Debtor's financial problems.

D. Even if Debtor could perform as proposed, Debtor would be left "in a position of having to payoff the entire [Creditor] principal and the IRS lien within months of the case's conclusion."

DISCUSSION

Failure to Afford Plan Payment

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Creditor states the plan is not feasible because:

A. The proposed payment of $3,845 is insufficient where after accounting for Trustee's fees, administrative expenses, arrearage payments, vehicle payments, and a priority dividend to the IRS total $4,101.84. Thus, Debtor's proposed payment is insufficient by $256.84.

B. The involvement of Ms. Gingold in budgeting and billpaying means there will be problems as it had previously happened and the court had been informed that Debtor Stephen would be the one in charger of their bookkeeping procedures.

C. The new property tax defaults show Debtor's inability to make their required payments and Debtor has failed to detail the terms of the payment plan or how they will be able to make said payments outside of the bankruptcy plan.

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

Modification of an Obligation Secured Only by Principal Residence

Creditor argues that Debtor's Plan was not filed in good faith and is an improper

modification of a claim secured only by a security interest in real property that is Debtor's principal residence. Debtor's Schedules indicate that this is Debtor's primary residence. Creditor argues that Debtor's failure to repay Creditor for his cure of the post-confirmation property tax delinquency is an impermissible modification.

Moreover, Creditor argues that his claim would be in fact a modification for which he has not consented to because the plan proposes to forgive and cure all the following defaults: Debtor are using the property as their personal residence instead of investment property as it was agreed; Debtor has failed to make monthly payments before and after the filing of this case; they have missed arrearage payments; and have failed to pay property taxes. Creditor asserts that these defaults are incurable.

This modification violates 11 U.S.C. § 1322(b)(2), which prohibits the modification of an obligation secured only by Debtor's residence.

Good-Faith Filing

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

1) The amount of the proposed payments and the amounts of the debtor's surplus;

2) The debtor's employment history, ability to earn, and likelihood of future increases in income;

3) The probable or expected duration of the plan;

4) The accuracy of the plan's statements of the debts, expenses and percentage of repayment of unsecured debt, and whether any inaccuracies are an attempt to mislead the court;

5) The extent of preferential treatment between classes of creditors;

6) The extent to which secured claims are modified;

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

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

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

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

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

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

According to Creditor, Debtor's modification is not proposed in good faith. Even if Debtor "perfectly performs" the plan, the property will still be subject to both Creditor's lien and the IRS lien after the plan has been completed. Further arguing that this will make it difficult for Debtor to refinance. Thus, the plan should provide for a sale of the property.

Creditor has filed a Countermotion for Remedies Upon Default/Motion to Confirm Termination or Absence of the Stay/Motion for Relief from Stay on March 16. 2021. Dckt. 122.

Creditor also notes that in this iteration of the Chapter 13 Plan, in addition to having previously listed an elderly parent who is listed as a dependent, who provides no contribution to the household expenses, Debtor now lists a 30 year old child, who makes no contribution to household expenses, and a grandchild as dependents. Supplemental Schedule J, Dckt. 108.

For the two debtors, they list $1,100 a month in food and housekeeping expenses. *Id*. They also list having $650 a month in transportation expenses for the two debtors. *Id*. Rather than increasing withholding for their proper income taxes, Debtor includes on Schedule J a monthly "expense" for increased withholding and $100 for "temporary employer payback for deferred benefits."

DECISION

Under the currently confirmed First Amended Plan and Order Confirming (Dckts. 52, 80) Creditor's claim is to be paid as a Class 1 Secured Claim, with both the current post-petition regular monthly payment and the arrearage cure payment made through the First Amended Plan. In its Opposition Creditor requests that the court confirm that the automatic stay has terminated as to Creditor pursuant to 11 U.S.C. § 362(c)(3), or alternatively grant relief pursuant to 11 U.S.C. § 362(d)(1). It is asserted that the Property was revested in the Debtor upon confirmation of the Plan, thus taking it out of protection from the 11 U.S.C. § 362(c)(3) termination of the stay as to Debtor.

Creditor asserts that "Incongruously, Section 3.11(c) of the Amended Plan seems to indicate that Class 1 claim holders, like [Creditor], must seek relief from the stay after confirmation." Motion for Relief, ¶ 8; Dckt. 122. Creditor finds the terms of a confirmed plan provide for the automatic stay to continue to protect property, which would be property of the bankruptcy estate if converted to a case under Chapter 7 for the benefit of the estate and creditors with unsecured claims, to be an abomination [the court's choice of terms, not Creditor's]. As this court has addressed in other cases, Congress drops the "repeat filer axe" on the automatic stay as protecting creditors and the bankruptcy estate in 11 U.S.C. § 362(c)(4). When the debtor has two prior cases that were pending and dismissed within one year of the subsequently filed case, the (c)(4) provisions explode and no stay goes into effect at all. With 11 U.S.C. § 362(c)(3), Congress keeps the automatic stay protections in place for the estate and creditors (telling them to wake up and smell the coffee to make sure they act to enforce/protect their rights). Having a plan term which continues the protections for the estate for properties that post-confirmation are revested in the debtor but would be part of the Chapter 7 case if converted is not inconsistent with 11 U.S.C. § 362(c)(3) and (c)(4) enacted by Congress.

Creditor's claim as stated in Proof of Claim 8-1 was ($233,181.30) as of the commencement of this case. By Creditor's own admission (and the court appreciates the accuracy of Creditor in making

statements under penalty of perjury), in 2019 when this case was filed the Property securing the claim had a value of $315,000. Proof of Claim 8-1, ¶ 9. This is consistent with the value stated by Debtor on Schedule A/B. Dckt. 1.

Creditor asserts that misrepresentations were made in Debtor obtaining the loan and that Debtor defaulted beginning with the first payment due under the Note and were six months in default when Creditor recorded its notice of default in June 2019. Motion for Relief, ¶ 4; Dckt. 4. The first payment was due December 2018 (Note, Exhibit A; Dckt. 128). To be six months in default by June 2019 would require Debtor to have defaulted in all payments due under the Note, or, if the month of June 2019 payment is included in the six defaults, only have made one of seven payments that had come due.

As Creditor notes, the court was very clear and direct in addressing Debtor's conduct in denying the Motion to Extend the Stay as to the Debtor. Civil Minutes, Dckt. 26.

Looking at the Supplemental Schedule I filed by Debtor, they list their gross monthly income to be $9,871.33. Dckt. 108 at 5. The deductions from Mr. Gingold's wages includes $270.83 for voluntary contributions to a retirement plan. *Id*. at 6. Debtor lists an additional $286.00 in mileage reimbursement and $774.00 in incentive bonus pay each months, for a total take home income of $8,201.34. *Id*.

On Supplemental Schedule J, Debtor lists ($4,356) in necessary monthly expenses, which do not include a mortgage payment, but does include property taxes, insurance, and maintenance.

Looking at the proposed Modified Plan (Dckt. 107), several items stand out:

A. For the 2019 Hyundai Elantra and the 2017 Toyota Corolla, Debtor's plan provides for paying these creditors 7.75% interest, approximately double what the court allows/requires under a *Till* analysis.

1. On Schedule A/B Debtor lists owning three cars: (1) a 2013 Toyota Corolla in good condition; (2) a 2017 Toyota Corolla in good condition; and (3) a 2019 Hyundai Elantra in excellent condition (having been purchased shortly before this bankruptcy case was filed).

a. In the Modified Plan, Debtor seeks to pay $551 a month for the Elantra and $374 a month for the Corolla.

(1) In light of Debtor owning a third car free and clear, one of these two "nicer" car could be given up. If it were the Hyundai, for the 42 months of payments required under the Plan, that would save Debtor $23,142 to help fund the plan over the next three and one half years.

B. The monthly plan payment by Debtor will be $3,845 beginning with March 2021. Modified Plan, § 7 Nonstandard Provisions. This $3,845.34 is the monthly net income shown on Supplemental Schedule J. Dckt. 108 at 8.

1. As noted above, the Debtor's necessary expenses of $4,356 include:

   a. ($1,100) a month for food and housekeeping supplies for the two debtors;

   b. ($279) a month for personal care products and services;

   c. ($650) for transportation (it is not clear if this is in addition to the $286 mileage reimbursement or the total amount to which the reimbursement is applied);

   d. ($100) for payment for deferred benefits;

2. In addition, Debtor has ($270.83) withheld monthly for voluntary retirement contributions.

C. Additionally, Debtor now lists an adult son (30 years old) as a "dependent" who makes no contribution to the household expenses that he and his 5 year old son cause Debtor.

It appears that with some modest tweaks and a modest contribution for a share of the household expenses/rent by the 30 year old son, Debtor could have another $1,000 a month to fund the Plan.

As Creditor has noted and the court address in the Ruling on the Motion to Extend the Stay, this is not the Debtor's first, second, or even third bankruptcy case in the last decade. In the period from January 1, 2010 and the August 2019 filing of this case, Debtor filed eleven prior cases (with one prior case in 1997, 2008 and 2009). Other than a Chapter 7 case in 2013 and one in 1997 in which the two debtors obtained Chapter 7 discharges, none of the other prior Chapter 7 cases or Chapter 13 cases were successfully prosecuted and ended up either being closed without a discharge or dismissed.

Debtor has a valuable asset with $100,000 in equity to protect. However, Debtor has demonstrated an inability to protect it. Additionally, if Creditor is to be believed, Debtor purchased the property not as a residence, but as a short turnaround investment and faces personal liability for any shortfall in the event of a default and judicial foreclosure (which appears unlikely given the value a year ago, which has probably increased).

At the hearing, **xxxxxxx**

~~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, Stephen Anthony Gingold and Karen Michelle Gingold ("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.~~

7. **19-25021-E-13 BJI-1** **STEPHEN/KAREN GINGOLD** **Michele Poteracke** **COUNTER MOTION FOR REMEDIES UPON DEFAULT AND/OR MOTION TO CONFIRM TERMINATION OR ABSENCE OF STAY, MOTION FOR RELIEF FROM AUTOMATIC STAY 3-16-21 [122]**

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(i).

Local Rule 9014-1(i) Countermotion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 16, 2021. By the court's calculation, 14 days' notice was provided. 14 days' notice is required. LOCAL BANKR. R. 9014-1(i) (requiring filing and service by the last day that opposition to the original motion is due).

The Countermotion for Remedies Upon Default/Motion to Confirm Termination or Absence of the Stay/Motion for Relief from Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(i). 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 Countermotion for Remedies Upon Default, Motion to Confirm Termination of the Stay and/or Relief from Stay is xxxxx.

Provident Trust Group, successor to Polycomp Trust Company, Custodian FBO Brian L. Kraft IRA ("Movant") seeks remedies upon default pursuant to Section 6.4 of the confirmed plan and relief from the automatic stay with respect to Stephen Anthony Gingold and Karen Michelle Gingold's ("Debtor") real property commonly known as 236 E. Kentucky, Fairfield, California ("Property"). Movant has provided the Declarations of Mark Gorton and Brian Kraft to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant provides evidence that there are eight (8) pre-petition payments in default, with a

pre-petition arrearage of $16,181.30. Declaration, Dckt. 127. Movant also argues Debtor has incurred an unpaid late charge in the amount of $144.67 as part of the post-petition payments due. *Id*.

Additionally, Creditor asserts that Debtor are delinquent in the real property taxes in the sum of $6,402.21, which he advanced in order to protect the priority of his Deed of Trust. *Id.*

CHAPTER 13 TRUSTEE'S RESPONSE

David P. Cusick ("the Chapter 13 Trustee") filed a Response on March 23, 2021. Dckt. 130. Trustee asserts that according to Trustee's records, Debtor is not delinquent in post-petition Class 1 contract payments to Creditor. Trustee explains that the total disbursement to ongoing mortgage will be $27,506.06 as of that date. According to Trustee's records, Debtor are not delinquent in post-petition Class 1 contract payments where Trustee has paid 18 mortgage payments to the Creditor thru February 2021 which is what has come due since the case was filed in August 2019 (making the first payment due September 2019 and that would make February 2021 month 18 in the case). Trustee does note that Creditor is due $2,273.14 for the pre-petition arrears dividends that the Trustee has not been able to disburse due to the Debtor's delinquency.

Trustee requests the court take into consideration that according to Creditor, the loan made to Debtor was meant for investment purposes with the intent for it to be "flipped," but that Debtor has made this property their sole residence as evidenced in Schedules A/B and C.

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be $233,181.30 (Declaration, Dckt. 127), while the value of the Property is determined to be $315,000.00, as stated in Schedules A/B and D filed by Debtor.

11 U.S.C. § 362(d)(1): Grant Relief for Cause

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because "cause" is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff'd sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments that have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

Creditor argues that such cause exists where Debtor has defaulted in post-confirmation payments pursuant to Section 6.04 of the confirmed Plan. Creditor presents evidence and Trustee has

confirmed, that Debtor has failed to cure pre-petition arrearage dividend due. Moreover, Creditor has presented evidence that Debtor has failed to pay real property taxes due.

11 U.S.C. § 362(j)

The Bankruptcy Code states the following:

(j)On request of a party in interest, the court shall issue an order under subsection (c) confirming that the automatic stay has been terminated.

11 U.S. C. § 362(j). Here, Creditor requests the court such order where the stay expired without extension as to the Debtor under section 362(c)(3), the property of the estate revested in the Debtor by the terms of the confirmed Plan and the Debtor is in default of their obligations under the confirmed Plan and their real property tax obligation.

Decision

Based upon the evidence submitted to the court, the court determines that **xxxxxxx**

~~The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the Property.~~

~~**Request for Waiver of Fourteen-Day Stay of Enforcement**~~

~~Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court.~~

~~Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3), and this part of the requested relief is granted.~~

~~No other or additional relief is granted by the court.~~

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

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

~~The Motion for Relief from the Automatic Stay filed by Provident Trust Group, successor to Polycomp Trust Company, Custodian FBO Brian L. Kraft IRA ("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 automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed that is recorded against the real property commonly known as 236 E. Kentucky, Fairfield, California, ("Property") to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale to obtain possession of the Property.

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived for cause.

No other or additional relief is granted.

8. **19-25021-E-13 DPC-3** **STEPHEN/KAREN GINGOLD** **Michele Poteracke** **CONTINUED MOTION TO DISMISS CASE** **2-1-21 [97]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on February 1, 2021. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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. The defaults of the non-responding parties in interest are entered.

The Motion to Dismiss is xxxxx.

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtors, Stephen Anthony Gingold and Karen Michelle Gingold ("Debtor"), are delinquent in plan payments.

DEBTOR'S OPPOSITION

Debtors filed an Opposition on February 16, 2021. Dckt. 101. Debtor will file a modified plan prior to the hearing.

TRUSTEE'S RESPONSE

Trustee states that Debtor made a February 18, 2021 payment, and has a Motion to Modify pending. Dckt, 114. Trustee requests the court continue the Motion to Dismiss to allow the Motion to Modify to be heard.

FILING OF MODIFIED PLAN

Debtor filed a Modified Plan and Motion to Confirm on February 22, 2021. Dckt. 105. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckt. 109. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon Debtor's personal knowledge. FED. R. EVID. 601, 602.

The Trustee requests, in light of the pending Motion to Confirm that this hearing be

continued (rather than the court's usual practice of denying a motion to dismiss without prejudice when a debtor appears to be actively prosecuting a plan to address the basis of the motion to dismiss). The Trustee does not indicate why continuing this hearing in light of Debtor's prosecution of the Motion to Confirm a Modified the Plan is necessary.

The court notes that the Declaration provided by Debtor in support of the Motion to Confirm is rich in factual details (and not merely parroted legal opinions drafted by an attorney).

This time, presuming that the Trustee has a reason for a continuance, the court continues the hearing. It will be conducted in conjunction with the hearing on the Motion to Confirm. If the Motion to Confirm is not granted, the court will then further continue the hearing on this Motion to Dismiss, affording the Debtor, Trustee, and creditors to focus just on the confirmation issues, and not be distracted by the threat/opportunity of dismissal.

In the future, if the Trustee has a reason to continue the hearing on a motion to dismiss in light of the debtor having a plan on file, motion to confirm, and appropriate supporting declaration, the Trustee should identify those grounds, if he wants the court to continue the hearing rather than dismissing or denying the motion to dismiss without prejudice.

MARCH 3, 2021 HEARING

The hearing on the Motion to Dismiss was continued to 2:00 p.m. on March 30, 2021, (specially set date and time) to be conducted in conjunction with the Debtor's Motion to Confirm the proposed modified plan.

If the proposed modified plan is not confirmed, the court will then set the Motion to Dismiss for hearing on a later date, so that the Debtor, Trustee, and creditors can focus on confirmation issues and not have a sword of Damocles threat of dismissing hanging over them.

March 30, 2021 Hearing

~~Debtor's Motion to Confirm the proposed plan was granted / denied on March 30, 2021, and thus the plan was / was not confirmed.~~

At the hearing **xxxxxxx**

9. **19-22531-E-13 SMJ-3** **PATRICIA NELSON** **Scott Johnson** **MOTION TO MODIFY PLAN** **2-22-21 [66]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 22, 2021. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is xxxxx.

The debtor, Patricia Margaret Nelson ("Debtor") seeks confirmation of the Modified Plan because Debtor's income was unstable during the outset of COVID-19, but due to the "current boom in residential mortgage refinances," Debtor has stable income and can afford the modified plan payments. Declaration, Dckt. 68. The Modified Plan provides payments of $1,998.00 for the remainder of the plan, and a 10 percent dividend to unsecured claims totaling $86,682.00. Modified Plan, Dckt. 70. 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 March 12, 2021. Dckt. 79. Trustee opposes confirmation of the Plan on the basis that Trustee is uncertain of Debtor's ability to pay.

DISCUSSION

Failure to Afford Plan Payment

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). The debtor has not filed supplements to Schedules I and J showing the current income and budget. The most recent Schedules I and J were filed September 20, 2019 (DN 43) and reflected monthly net income of $1,733.84. The proposed plan payment is $1,998.00. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Court's Review of the Docket

Debtor filed amended Schedules I and J on March 16, 2021. Dckt. 82. Debtor's Amended Schedule J, lists a $1999.00 monthly net income, while the Plan provides for a $1,998.00 monthly payment.

The court notes that Debtor's expenses in Schedule J have remained exactly the same in two years.

At the hearing xxxxxxxx

~~Debtor having filed Amended Schedules I and J and thus addressing Trustee's concerns, the Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.~~

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Patricia Margaret Nelson ("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 xxxxx.

10. 21-20244-E-13 DPC-1 KAREN MILLER Mohammad Mokarram OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK 3-10-21 [15]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on March 10, 2021. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is xxxxx.

The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that Debtor failed to provide proof of Social Security Number.

DISCUSSION

Trustee's objection is well-taken.

Failure to Provide Social Security Number

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

Debtor failed to provide proof of her Social Security Number at the First Meeting of Creditors on March 4, 2021. The meeting was continued to April 1, 2021 at 1:00 p.m. Trustee requests the Court continue the hearing on this matter to allow for proof of social security number to be provided.

At the hearing xxxxxxxx

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

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

11. 21-20745-E-13 EJS-1 LESLIE COX Eric Schwab MOTION TO EXTEND AUTOMATIC STAY O.S.T. 3-15-21 [8]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, and Office of the United States Trustee on March 15, 2021. By the court's calculation, 15 days' notice was provided. The court shortened time for service to March 15, 2021. / The court set the hearing for March 30, 2021. Dckt. 13.

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

The Motion to Extend the Automatic Stay is granted.

Leslie Theresa Cox ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 18-23589) was dismissed on December 23, 2020, after Debtor became delinquent in $12,730.00 in plan payments. *See* Order, Bankr. E.D. Cal. No. 18-23589, Dckt. 29, December 23, 2021. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because Debtor fell behind in plan payments when she was hospitalized to receive a kidney transplant in 2020. Declaration, Dckt. 11. Moreover, Debtor incurred additional monthly expense for medication and supplies. *Id.*, ¶ 3-4. Debtor states she was unable to modify the previous plan because of additional expenses and creditor claims filed, but now Debtor has sufficient income to make the Chapter 13 Plan payments. *Id.*

Trustee's Non-Opposition

Trustee filed a statement of Non-Opposition on March 17, 2021. Dckt. 16. Trustee does not oppose the motion, but requests the court take notice of two issues. First, Debtor's pending plan calls for payments that are $705.00 more than the payments in her previous case. Second, Debtor's Schedule I sufficiently supports this with increases in income from social security, $641.00, and pension, $453.00, over her previous case. *Id*.

DISCUSSION

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

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

A. Why was the previous plan filed?

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

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

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

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

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

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

The Motion to Extend the Automatic Stay filed by Leslie Theresa Cox ("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.

12. 19-25451-E-13 PSB-1 — MONICA PEREZ — Paul Bains — MOTION TO MODIFY PLAN — 2-19-21 [39]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 19, 2021. By the court's calculation, 39 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is xxxxxxx.

The debtor, Monica Del Rocio Perez ("Debtor") seeks confirmation of the Modified Plan because Debtor has transitioned into a new position and must account for payment default after encountering mental health issues related to the COVID-19 pandemic and additional expenses for her granddaughter. Declaration, Dckt. 41. The Modified Plan provides payments of $796.00 for months 17

- 60, and a 38.98 percent dividend to unsecured claims totaling $65,533.63. Modified Plan, Dckt. 44. 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 March 12, 2021. Dckt. 51. Trustee opposes confirmation of the Plan on the basis that:

A. Voluntary retirement contributions should no longer be paid as Debtor has reduced the percentage payments of unsecured creditors from 100% to 38.98%.

B. Plan payments are incorrect under the modified plan and would need to show a total paid in through February (month 18) of $24,835.00, then $796.00 for months 19 - 60, as Debtor has actually paid a total of $24,835.00. Trustee would have no objection to the Plan if Debtor corrected the Plan payments.

DISCUSSION

Unfair Discrimination Against Unsecured Claims: Retirement Contribution

The Chapter 13 Trustee opposes confirmation due to possible unfair discrimination to unsecured claims under 11 U.S.C. § 1322(b)(1). Debtor proposes to pay 38.98% to unsecured claims and reduce her plan payment by $944.00; however, Debtor's prior Schedule I filed August 29, 2019 (DN 1, page 31) included a monthly voluntary retirement contribution of $309.40, and her current Supplemental Schedule I reflects a $145.36 monthly voluntary retirement contribution.

Debtor filed a Response on March 23, 2021. Dckt. 54. Debtor argues that the voluntary contribution is reasonable and proposed in good faith. Debtor points the court to *In Re Davis* (United States Court of Appeals, 6th Cir., 17-12965) [FN.1].

Research conducted by the court's law clerk indicates that the case referred to by Debtor is actually *Davis v. Helbling (In re Davis)*, 960 F.3d 346 (6th Cir. 2020). Debtor argues that the court held that a debtor who was making 401(k) contributions before filing for bankruptcy relief may continue making contributions in the same amount by deducting the contributions from "disposable income". Debtor further argues that under the holding of this recent case, the "hanging" paragraph in 11 U.S.C. § 541(b)(7) is to be interpreted, applying "established canons of construction," as excluding post-petition 401(k) contributions from disposable income.

Thus, Debtor argues, she may continue making these contributions when taking into consideration, as the *In re Davis* court did, that Debtor's employer is currently withholding $145.36 per month for her voluntary retirement contributions, which is $164.04 less than when her case was filed on 08/29/2019. Additionally, Debtor has been making a contribution of $309.40 for at least six (6) months prior to the filing of this case, and the general unsecured creditors are set to receive a 38.98% dividend from the total amount owed, which is a 28.98% increase compared to the *Davis* matter.

FN.1. Debtor's Counsel failed to provide this court with the proper citation for this case. Indeed,

the bankruptcy case number stated is also incorrect. Additionally, Counsel refers to Exhibit A, but no such exhibit was filed with the court.

As to the corrected plan payments to date, Debtor does not oppose adding the following language to the Order Confirming:

> "Debtor has paid a total of $24,835.00 through month 18. Debtor will pay $796.00 per month for months 19-60."

Response, at ¶ 2.

Decision

While the court understands Debtor's need to fund her retirement, as stated by Debtor herself, she is 44 years old. Debtor has approximately over 20 more years before potential retirement. If completely successfully, Debtor will complete this plan in three years.

Debtor is employed by Kaiser Permanente and has a Pension Plan (Schedule A/B, ¶ 21; Dckt. 1). The scope of these benefits are not explained by Debtor as part of her analysis why she should be allowed to divert income to additional retirement planning during the remaining three years of this Plan.

Debtor has income of $8,134 a month in wages from Kaiser - a significant income for those seeking relief through Chapter 13. Supplemental Schedule I, Dckt. 45. On Supplemental Schedule J Debtor lists two dependents - a 21 year old child and a granddaughter. *Id*. On Supplemental Schedule I Debtor does not list any deductions for her pension plan, it appearing to be fully funded by her employer. Debtor does not list any income for living expense contribution from her adult child listed as a "dependent."

On Supplemental Schedule J Debtor lists having ($1,000) a month in Childcare and Children's Education Expense for her adult child. *Id*.

With respect to the voluntary contribution amount being reasonable because it is less than Debtor was previously taking, the court considers the terms of the prior plan and the reductions in the proposed Modified Plan.

	Original Plan	**Percentage Change**	**Proposed Modified Plan**
Plan Payment	$1,740.00	-54%	$796.00
Unsecured Dividend	100%	-61.2%	38.98%
Change in Voluntary Retirement Contribution	$309.40	-53%	$145.36

When the situation is viewed in light of who is bearing the burden of the change, the creditors

with unsecured claims are retaining their dividend notwithstanding there being a 54% reduction in the monthly plan payment.

At the hearing, **xxxxxxx**

The Modified Plan ~~does not~~ complies 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, Monica Del Rocio Perez ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Motion to Confirm the Modified Plan is **xxxxxxx**.

13. **21-20752-E-13 PGM-1** | **DOUGLAS/VALERIE LUTES** **Peter Macaluso** | **MOTION TO EXTEND AUTOMATIC STAY** **3-14-21 [12]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 15, 2021. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

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

The Motion to Extend the Automatic Stay is granted.

Douglas Matthew Lutes and Valerie Lyn Lutes ("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. 17-24960) was dismissed on March 7, 2020, after Debtor failed to make plan payments. *See* Order, Bankr. E.D. Cal. No. 17-24960, Dckt. 120, March 7, 2020. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because at the time they did not have the funds to pay for the Chapter 13 plan after suffering an accident that has prevented Debtor from returning to his employment. Declaration, Dckt. 15. Debtor explains that they can now make plan payments due to inheritance received after the death of Debtor Valerie's father. *Id.*

Trustee filed an Opposition to the extension on the basis that Debtor has failed to list their

mortgage expense in the amount of $1,927.59 in their Schedule J, where Fay Servicing is being treated as a Class 4 creditor under the proposed plan. Dckt. 19, ¶ 1. Trustee argues that Debtor will not be able to fund their proposed plan where there is no money to account for this mortgage payment. *Id.* Moreover, Trustee is uncertain that Debtor has overcome the presumption of bad faith where Debtor fails to adequately account for the probate case. *Id.*, ¶ 2.

DISCUSSION

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

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

A. Why was the previous plan filed?

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

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

On March 23, 2021, Debtor filed a Reply to Trustee's Opposition. Dckt. 25. In the Reply, Debtor contends that they have the ability to pay for the plan and has sent Trustee a $35,000.00 payment ahead of the Plan. *See* Exhibit C, Dckt. 27. In their Declaration filed in support of the Opposition, Debtor explains that Debtor Valerie will receive an inheritance valued at approximately $700,000, of which Debtor has already received $100,000. Declaration, Dckt. 26. Debtor asserts that they have estimated a monthly stipend of $4,250 per month from the $100,000 savings until the probate settles plus a $35,000 lump-sum payment. *Id.*, ¶ 3. Debtor further explains that although the proposed plan is for 60 months, Debtor intends to use the inheritance funds to pay 100% to their creditors. *Id.* ¶ 5.

Lastly, in the Response, Debtor states that, now that they been denied a loan modification, Debtor will be filing a First Amended Plan which will call for the payments to the first deed of trust as a

Class 1 claim, and utilizing the $35,000 lump-sum to be directed in the amount of $25,000.00 to the class 2 creditor, and the balance applying as normal to the first deed of trust.

Debtor filed an Amended Plan and a Motion to Confirm on March 24, 2021, which have been set for hearing on May 11, 2021. Dckt. 32, 29. Debtor has also filed Amended Schedules I and J. Dckt. 33. Debtor's Amended Schedule I lists the monthly income from the probate case in Line 8h at $4,250.00. *Id.*, at 5.

The court finds that 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. Trustee's concerns are valid, but can be addressed through the Plan and administration of this Case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Extend the Automatic Stay filed by Douglas Matthew Lutes and Valerie Lyn Lutes ("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.

14. **19-25057-E-13** **ARACELY RIVAS** **MOTION FOR COMPENSATION FOR**
PGM-5 **Peter Macaluso** **PETER G. MACALUSO, DEBTORS ATTORNEY(S)**
2-28-21 [73]

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

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

Sufficient Not Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, and Office of the United States Trustee on February 28, 2021. By the court's calculation, 30 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

Movant did not provide the total amount of days required by Federal Rule of Bankruptcy Procedure 2002 and the Local Bankruptcy Rules. At the hearing, xxxxxxxx

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

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

Peter Macaluso, the Attorney ("Applicant") for Aracely Rivas, the Chapter 13 Debtor ("Client"), makes a Request for the Additional Allowance of Fees and Expenses in this case.

Fees are requested for the period August 24, 2020, through October 28, 2020. Applicant requests fees in the amount of $1,500.00.

Trustee's Opposition

David Cusick ("Trustee"), the Chapter 13 Trustee, filed an Opposition on March 10, 2021 opposing the fees on the basis that if the application was granted the new balance of fees to be paid through the Plan would be $2,870.00 and at $40.00 per month it will not be feasible to pay the amount in full where there are 66 months left in Debtor's plan. Dckt. 78.

Trustee also notes that although Applicant does not describe in detail the attorneys work

done, as the Court might expect, the fees appear reasonable and beneficial to the estate, and the Trustee does not oppose the fees sought. *Id.*

Applicant's Response

Applicant filed a Reply on March 22, 2021. Dckt. 80. Applicant accepts the monthly dividend of $40.00 asserting that the remaining fees owed will be paid by the end of the Chapter 13 term. *Id.* Additionally, Applicant is not opposed to a stipulated minor modification of the Chapter 13 Plan to increase the monthly dividend. *Id.*

As to Trustee's concerns regarding details of the work done by counsel, the court appreciates Trustee's concerns. After reviewing the billing details provided by counsel in the motion, for purposes of this case and for the work done by counsel, the court finds that sufficient information has been provided.

APPLICABLE LAW

Statutory Basis For Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including–
>
> (A) the time spent on such services;
>
> (B) the rates charged for such services;
>
> (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
>
> (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
>
> (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
>
> (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

(i) unnecessary duplication of services; or
(ii) services that were not—
(I) reasonably likely to benefit the debtor's estate;
(II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). An attorney must "demonstrate only that the services were reasonably likely to benefit the estate at the time rendered," not that the services resulted in actual, compensable, material benefits to the estate. *Ferrette & Slatter v. United States Tr. (In re Garcia)*, 335 B.R. 717, 724 (B.A.P. 9th Cir. 2005) (citing *Roberts, Sheridan & Kotel, P.C. v. Bergen Brunswig Drug Co. (In re Mednet)*, 251 B.R. 103, 108 (B.A.P. 9th Cir. 2000)). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

Reasonable Fees

A bankruptcy court determines whether requested fees are reasonable by examining the circumstances of the attorney's services, the manner in which services were performed, and the results of the services, by asking:

A. Were the services authorized?

B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?

C. Are the services documented adequately?

D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?

E. Did the attorney exercise reasonable billing judgment?

In re Garcia, 335 B.R. at 724 (citing *In re Mednet*, 251 B.R. at 108; *Leichty v. Neary (In re Strand)*, 375 F.3d 854, 860 (9th Cir. 2004)).

Reasonable Billing Judgment

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged for services, the attorney must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the services provided because the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign to run up a [fees and expenses] tab without considering the maximum probable recovery," as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat'l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) ("Billing judgment is mandatory."). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney is obligated to consider:

(a) Is the burden of the probable cost of legal services disproportionately large in relation to the size of the estate and maximum probable recovery?

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

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

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

A review of the application shows that Applicant's for the Estate include reviewing motions, meeting with client, and appearing at the hearings. The court finds the services were beneficial to Client and the Estate and were reasonable.

"No-Look" Fees

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

> (a) Compensation. Compensation paid to attorneys for the representation of chapter 13 debtors shall be determined according to Subpart (c) of this Local Bankruptcy Rule, unless a party-in-interest objects or the attorney opts out of Subpart (c). The failure of an attorney to file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys, shall signify that the attorney has opted out of Subpart (c). When there is an objection or when an attorney opts out, compensation shall be determined in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017, and any other applicable authority."
> . . .
> (c) Fixed Fees Approved in Connection with Plan Confirmation. The Court will, as part of the chapter 13 plan confirmation process, approve fees of attorneys representing chapter 13 debtors provided they comply with the requirements to this Subpart.
>
> (1) The maximum fee that may be charged is $4,000.00 in nonbusiness cases, and $6,000.00 in business cases.
>
> (2) The attorney for the chapter 13 debtor must file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys.
>
> (3) If the fee under this Subpart is not sufficient to fully and fairly compensate counsel for the legal services rendered in the case, the attorney may apply for additional fees. The fee permitted under this Subpart, however, is not a retainer that, once exhausted, automatically justifies a motion for additional fees. Generally, this fee will fairly compensate the debtor's attorney for all preconfirmation services and most postconfirmation services, such as reviewing the notice of filed claims, objecting to untimely claims, and modifying the plan to

conform it to the claims filed. Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation. Form EDC 3-095, Application and Declaration RE: Additional Fees and Expenses in Chapter 13 Cases, may be used when seeking additional fees. The necessity for a hearing on the application shall be governed by Fed. R. Bankr. P. 2002(a)(6).

The Order Confirming the Chapter 13 Plan expressly provides that Applicant is allowed $4,000.00 in attorneys' fees, the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dckt. 44. Applicant prepared the order confirming the Plan.

Lodestar Analysis

If Applicant believes that there has been substantial and unanticipated legal services that have been provided, then such additional fees may be requested as provided in Local Bankruptcy Rule 2016-1(c)(3). The attorney may file a fee application, and the court will consider the fees to be awarded pursuant to 11 U.S.C. §§ 329, 330, and 331. For bankruptcy cases in the Ninth Circuit, "the primary method" to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves "multiplying the number of hours reasonably expended by a reasonable hourly rate." *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). "This calculation provides an objective basis on which to make an initial estimate of the value of a lawyer's services." *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). A compensation award based on the lodestar is a presumptively reasonable fee. *In re Manoa Fin. Co.*, 853 F.2d 687, 691 (9th Cir. 1988).

In rare or exceptional instances, if the court determines that the lodestar figure is unreasonably low or high, it may adjust the figure upward or downward based on certain factors. *Miller v. Los Angeles Cty. Bd. of Educ.*, 827 F.2d 617, 620 n.4 (9th Cir. 1987). Therefore, the court has considerable discretion in determining the reasonableness of a professional's fees. *Gates v. Duekmejian*, 987 F.2d 1392, 1398 (9th Cir. 1992). It is appropriate for the court to have this discretion "in view of the [court's] superior understanding of the litigation and the desirability of avoiding frequent appellate review of what essentially are factual matters." *Hensley*, 461 U.S. at 437. Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate. *See In re Placide*, 459 B.R. at 73 (citing *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

FEES AND COSTS & EXPENSES REQUESTED

Fees

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories.

Motion to Dismiss: Applicant spent 1.75 hours in this category. Applicant reviewed Motion

to Dismiss, met with client, prepared and filed Opposition to Motion to Dismiss, and appeared at the hearing on the motion.

Motion to Modify: Applicant spent 3.95 hours in this category. Applicant met with client to formulate new plan, prepared and filed Motion to Modify, reviewed Opposition to motion, prepared and filed Response to Opposition, and appeared at the hearing on the motion.

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The persons providing the services, the time for which compensation is requested, and the hourly rates are:

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Peter G. Macaluso	5.3	$300.00	$1,590.00
Legal Assistant	.4	$75.00	$30.00
Total Fees for Period of Application			$1,620.00

FEES AND COSTS & EXPENSES ALLOWED

Fees

The unique facts surrounding the case, including reviewing Motion to Dismiss, meeting with client, and appearing on motions, raise substantial and unanticipated work for the benefit of the Estate, Debtor, and parties in interest. The court finds that the reduced amount sought is reasonable and that Applicant effectively used appropriate rates for the services provided. The request for additional fees in the amount of $1,500.00 is approved pursuant to 11 U.S.C. § 330 and authorized to be paid by David Cusick ("the Chapter 13 Trustee") from the available funds of the Plan in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

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

Fees $1,500.00

pursuant to this Application as final fees pursuant to 11 U.S.C. § 330 in this case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Peter G. Macaluso ("Applicant"), Attorney having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause

appearing,

IT IS ORDERED that Peter G. Macaluso is allowed the following fees and expenses as a professional of the Estate:

Peter G. Macaluso, Professional Employed
by Aracely Rivas ("Debtor")

Fees in the amount of $1,500.00,

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

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

15. 19-24877-E-13 PGM-4 — JUAN ALMANZA, Peter Macaluso — MOTION FOR COMPENSATION FOR PETER G. MACALUSO, DEBTORS ATTORNEY(S), 2-28-21 [86]

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

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

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, and Office of the United States Trustee on February 28, 2021. By the court's calculation, 30 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

Movant did not provide the total amount of days required by Federal Rule of Bankruptcy Procedure 2002 and Local Bankruptcy Rules. At the hearing, xxxxxxxx

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

The Motion for Allowance of Professional Fees is granted.

Peter G. Macaluso, the Attorney ("Applicant") for Juan Alfonso Almanza, the Chapter 13 Debtor ("Client"), makes a Request for the Additional Allowance of Fees and Expenses in this case.

Fees are requested for the period August 24, 2021, through October 29, 2021. Applicant requests fees in the amount of $1,395.00.

Trustee's Response

David Cusick ("Trustee"), the Chapter 13 Trustee, filed a Response on March 10, 2021. Dckt. 91. Trustee asserts that Applicant does not describe in detail the attorneys work done, as the Court

might expect, but does not oppose the application.

The court appreciates Trustee's concerns. After reviewing the billing details provided by counsel in the motion, for purposes of this case and for the work done by counsel, the court finds that sufficient information has been provided.

APPLICABLE LAW

Statutory Basis For Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including–
>
> (A) the time spent on such services;
>
> (B) the rates charged for such services;
>
> (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
>
> (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
>
> (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
>
> (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

> (i) unnecessary duplication of services; or
> (ii) services that were not—
> (I) reasonably likely to benefit the debtor's estate;
> (II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). An attorney must "demonstrate only that the services were reasonably likely to benefit the estate at the time rendered," not that the services resulted in actual, compensable, material benefits to the estate. *Ferrette & Slatter v. United States Tr. (In re Garcia)*, 335 B.R. 717, 724 (B.A.P. 9th Cir. 2005) (citing *Roberts, Sheridan & Kotel, P.C. v. Bergen Brunswig Drug Co. (In re Mednet)*, 251

B.R. 103, 108 (B.A.P. 9th Cir. 2000)). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

Reasonable Fees

A bankruptcy court determines whether requested fees are reasonable by examining the circumstances of the attorney's services, the manner in which services were performed, and the results of the services, by asking:

A. Were the services authorized?

B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?

C. Are the services documented adequately?

D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?

E. Did the attorney exercise reasonable billing judgment?

In re Garcia, 335 B.R. at 724 (citing *In re Mednet*, 251 B.R. at 108; *Leichty v. Neary (In re Strand)*, 375 F.3d 854, 860 (9th Cir. 2004)).

Reasonable Billing Judgment

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged for services, the attorney must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the services provided because the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign to run up a [fees and expenses] tab without considering the maximum probable recovery," as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat'l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) ("Billing judgment is mandatory."). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney is obligated to consider:

(a) Is the burden of the probable cost of legal services disproportionately large in relation to the size of the estate and maximum probable recovery?

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

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

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

A review of the application shows that Applicant's for the Estate include preparing and reviewing motions, appearing at motions, and sending orders. The court finds the services were beneficial to Client and the Estate and were reasonable.

"No-Look" Fees

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

> (a) Compensation. Compensation paid to attorneys for the representation of chapter 13 debtors shall be determined according to Subpart (c) of this Local Bankruptcy Rule, unless a party-in-interest objects or the attorney opts out of Subpart (c). The failure of an attorney to file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys, shall signify that the attorney has opted out of Subpart (c). When there is an objection or when an attorney opts out, compensation shall be determined in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017, and any other applicable authority."
> . . .
> (c) Fixed Fees Approved in Connection with Plan Confirmation. The Court will, as part of the chapter 13 plan confirmation process, approve fees of attorneys representing chapter 13 debtors provided they comply with the requirements to this Subpart.
>
> (1) The maximum fee that may be charged is $4,000.00 in nonbusiness cases, and $6,000.00 in business cases.
>
> (2) The attorney for the chapter 13 debtor must file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys.
>
> (3) If the fee under this Subpart is not sufficient to fully and fairly compensate counsel for the legal services rendered in the case, the attorney may apply for additional fees. The fee permitted under this Subpart, however, is not a retainer that, once exhausted, automatically justifies a motion for additional fees. Generally, this fee will fairly compensate the debtor's attorney for all preconfirmation services and most postconfirmation services, such as reviewing the notice of filed claims, objecting to untimely claims, and modifying the plan to conform it to the claims filed. Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation. Form EDC 3-095, Application and Declaration RE: Additional Fees and Expenses in Chapter 13 Cases, may be used when seeking additional fees. The necessity for a hearing on the application shall be governed by Fed. R. Bankr. P. 2002(a)(6).

The Order Confirming the Chapter 13 Plan expressly provides that Applicant is allowed $4,000.00 in

attorneys' fees, the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dckt. 60. Applicant prepared the order confirming the Plan.

Lodestar Analysis

If Applicant believes that there has been substantial and unanticipated legal services that have been provided, then such additional fees may be requested as provided in Local Bankruptcy Rule 2016-1(c)(3). The attorney may file a fee application, and the court will consider the fees to be awarded pursuant to 11 U.S.C. §§ 329, 330, and 331. For bankruptcy cases in the Ninth Circuit, "the primary method" to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves "multiplying the number of hours reasonably expended by a reasonable hourly rate." *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). "This calculation provides an objective basis on which to make an initial estimate of the value of a lawyer's services." *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). A compensation award based on the lodestar is a presumptively reasonable fee. *In re Manoa Fin. Co.*, 853 F.2d 687, 691 (9th Cir. 1988).

In rare or exceptional instances, if the court determines that the lodestar figure is unreasonably low or high, it may adjust the figure upward or downward based on certain factors. *Miller v. Los Angeles Cty. Bd. of Educ.*, 827 F.2d 617, 620 n.4 (9th Cir. 1987). Therefore, the court has considerable discretion in determining the reasonableness of a professional's fees. *Gates v. Duekmejian*, 987 F.2d 1392, 1398 (9th Cir. 1992). It is appropriate for the court to have this discretion "in view of the [court's] superior understanding of the litigation and the desirability of avoiding frequent appellate review of what essentially are factual matters." *Hensley*, 461 U.S. at 437. Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate. *See In re Placide*, 459 B.R. at 73 (citing *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

FEES AND COSTS & EXPENSES REQUESTED

Fees

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories.

Motion to Dismiss: Applicant spent 1.0 hours in this category. Applicant reviewed Motion to Dismiss, met with client, reviewed Notice of Withdrawal of Motion to Dismiss.

Motion to Modify: Applicant spent 3.95 hours in this category. Applicant prepared and filed Motion to Modify, met with client, reviewed Opposition to motion, prepared and filed Response to Opposition, appeared at the hearing on the motion, and prepared and sent order to Trustee.

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The persons providing the services, the time for which

compensation is requested, and the hourly rates are:

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Peter G. Macaluso	4.55	$300.00	$1,365.00
Legal Assistant	.40	$75.00	$30.00
Total Fees for Period of Application			$1,395.00

FEES AND COSTS & EXPENSES ALLOWED

Fees

The unique facts surrounding the case, including preparing and reviewing motions, appearing at hearings, and meeting with client, raise substantial and unanticipated work for the benefit of the Estate, Debtor, and parties in interest. The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. The request for additional fees in the amount of $1,395.00 is approved pursuant to 11 U.S.C. § 330 and authorized to be paid by David Cusick ("the Chapter 13 Trustee") from the available funds of the Plan in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

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

Fees $1,395.00

pursuant to this Application as final fees pursuant to 11 U.S.C. § 330 in this case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Peter G. Macaluso ("Applicant"), Attorney having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Peter G. Macaluso is allowed the following fees and expenses as a professional of the Estate:
>
> Peter G. Macaluso, Professional Employed by Juan Alfonso Almanza ("Debtor")
>
> Fees in the amount of $1,395.00,

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

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

16.	**20-23896-E-13 MET-4**	**MILTON PEREZ Mary Ellen Terranella**	**OBJECTION TO CLAIM OF U.S. BANK NATIONAL ASSOCIATION, CLAIM NUMBER 1 2-9-21 [72]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on February 9, 2021. By the court's calculation, 49 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

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

The Objection to Proof of Claim Number 1-2 of U.S. Bank National Association as Trustee for the registered holders of ABFC 2007-WMC1 Trust Asset Backed Funding Corporation Asset Backed Certificates, Series 2007-WMC1 is sustained, and the claim is disallowed as ~~to $5,479.01 in pre-petition arrears.~~

Milton Raul Perez, Chapter 13 Debtor, ("Objector") requests that the court disallow the claim of U.S. Bank National Association as Trustee for the registered holders of ABFC 2007-WMC1 Trust Asset Backed Funding Corporation Asset Backed Certificates, Series 2007-WMC1 ("Creditor"), Proof of Claim No. 1-2 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be

secured in the amount of $89,344.38. Objector asserts that the pre-petition arrearage portion of the Proof of Claim in the amount of $6,715.47 has been paid and that said amount paid should be disallowed.

DISCUSSION

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

Objector seeks to disallow the arrearage portion of the Proof of Claim due to Objector making an alleged payment pre-petition that was not accounted for in Creditor's Proof of Claim as a pre-petition payment. Objector states that the Loan Payment History included in the Proof of Claim shows that, as of August 11, 2020, the principal, interest, and escrow past due balance was $4,189.68. On August 4, 2020, before the instant case was filed, Objector mailed Creditor the sum of $4,189.68. Dckt. 72. Objector asserts that Creditor was paid all but $1,289.33 of its claim amount before the Objector filed the case.

Objector further argues that the Proof of Claim shows a "projected escrow shortage" in the amount of $1,289.33, which, in Objector's view, by its very definition cannot be attributed to a pre-petition amount. Objector asserts that claiming such future and unknown adjustments are actually pre-petition arrearage artificially and improperly changes the normal future adjustments into a pre-petition claim.

Objector filed Exhibit B, a copy of the Wells Fargo account which shows a check debit of $4,189.68 on August 18, 2020. Dckt. 74. No declaration has been provided in order to properly authenticate the bank statement filed as Exhibit B. Objector argues that he had not realized Creditor had stopped accessing the auto pay mortgage payments when Objector filed his previous Chapter 13 plan on April 1, 2020.

Creditor's Response

Creditor filed a Response on March 16, 2021. Dckt. 89. In their Response, Creditor alleges Creditor's counsel has attempted to reach out to Debtor's counsel and is still attempting to at the time of filing. Moreover, Creditor is in the process of amending its Proof of Claim to reflect the payment in question. Creditor anticipates that the amended Proof of Claim will be filed prior to the hearing date and will resolve Objector's Objection.

Creditor filed amended Proof of Claim 1-3 on March 26, 2021. Proof of Claim 1-3. Creditor now asserts $950.00 are necessary to cure any default as of the date of the petition. *Id.*, at 2. According to the Mortgage Proof of Claim Attachment, the $950.00 are for "pre-petition fees due." *Id.*, at 4.

Further review of the proof of claim contains the following breakdown for the fees:

Fee Breakdown		
Effective date	**Description**	**Auth.Amt**
5/26/2020	BK ATTY FEE	$250.00
6/2/2020	PROOF CLAIM	$700.00
Total		**$950.00**

Although presented with a bank statement showing that a payment was made pre-petition, such bank statement was not properly authenticated.

At the hearing xxxxxxxx

~~Creditor has filed an amended proof of claim removing the previously asserted pre-petition and escrow shortage. Based on the evidence before the court, Creditor's claim is disallowed as to the arrearage portion in the amount of $5,479.01. The Objection to the Proof of Claim is sustained.~~

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

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

~~The Objection to Claim of U.S. Bank National Association as Trustee for the registered holders of ABFC 2007-WMC1 Trust Asset Backed Funding Corporation Asset Backed Certificates, Series 2007-WMC1 ("Creditor"), filed in this case by Milton Raul Perez, Chapter 13 Debtor, ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~**IT IS ORDERED** that the Objection to Proof of Claim Number 1-2 of Creditor is sustained, and the claim is disallowed as to $5,479.01.~~

17. 16-27597-E-13 MET-2 RUBEN/HERMINA HERNANDEZ Mary Ellen Terranella MOTION TO MODIFY PLAN 2-16-21 [52]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 18, 2021. By the court's calculation, 40 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is granted.

The debtor, Ruben Calderon Hernandez and Hermina Hernandez ("Debtor") seeks confirmation of the Modified Plan to increase their Plan payments in order to address a delinquency and remove voluntary retirement payments. Declaration, Dckt. 56. The Modified Plan provides payments of $1,141.01 for 50 months and $1,382.00 for 15 months, and a 20 percent dividend to unsecured claims totaling 16,047.00. Modified Plan, Dckt. 54. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION/AMENDED RESPONSE

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on March 12, 2021. Dckt. 66. Trustee opposes confirmation of the Plan on the basis that Debtor was delinquent in Plan payments and Debtor has not proposed a firm commitment period.

DISCUSSION

Trustee's Opposition on the basis of delinquency seems to have been in error. Debtor filed a Response on March 16, 2021 asserting that Debtor is not delinquent but that the modified plan

inaccurately accounts for the payments made into the plan through February 2021 and that such an error has been addressed and corrected on the proposed order modifying the plan. Debtor has attached Exhibit A, Proposed Order Modifying Plan, correcting the error. Dckt. 70. Moreover, the proposed Order also verifies the term of the plan shall be 65 months.

The Chapter 13 Trustee filed an Amended Response on March 23, 2021 seeking removal of the language stating $1,118.67 for 51 months from the proposed order on the basis that such payments for such amount actually totals $57,052.17 and not the correct total of $57,052.00 paid by Debtor through February 2021. Dckt. 72.

At the hearing xxxxxxxx

~~Debtor making the necessary corrections and thus Trustee's concerns having been addressed, The Modified Plan, as amended, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.~~

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

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

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

~~**IT IS ORDERED** that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on February 16, 2021, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"),for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

18. **19-26999-E-13** **NICHOLAUS BAILEY** **MOTION TO MODIFY PLAN**
MRL-1 **Mikalah Liviakis** **2-17-21 [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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 18, 2021. By the court's calculation, 40 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is xxxxxxx .

The debtor, Nicholaus Alexander Bailey ("Debtor") seeks confirmation of the Modified Plan because his employer restricted sales visits during Covid-19 which reduced his income but these restrictions have now been lifted. Declaration, Dckt. 28. The Modified Plan provides payments of $11,830.00 for 15 months and $940.00 for 57 months, and a zero (0) percent dividend to unsecured claims totaling $27,194.00. Modified Plan, Dckt. 27. 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 March 12, 2021. Dckt. 34. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor has not filed supplemental Schedules I and J.

B. Debtor proposes to alter the monthly dividend for previously paid months.

DEBTOR'S REPLY

Debtor filed a Reply to Trustee's Opposition on March 18, 2021. Dckt. 38. Debtor alleges they have filed updated schedules I and J on March 18, 2021. A review of the docket shows that supplemental Schedules I and J have been filed. Dckt. 37. Moreover, Debtor agrees that as to any distributions and payments made by the Trustee pursuant to Debtor's confirmed Plan, they are authorized and ratified by this new plan.

A review of Debtor's Supplemental Schedule I shows that the income has remained the same at $6,500 in two years. Moreover, the only difference in two years as it pertains to his income is that payroll deductions have increased from $1,397.50 to $1,447.33. Also, except for an increase in providing support to his daughter from $400.00 to $600.00, not one other expense has changed in two years. Accounting for inflation and for the COVID-19 pandemic in the last year, it is unlikely that these expenses are accurate.

That Debtor chose to not file Supplemental Schedules I and J to provide the court with the current financial information necessary to rule on this Motion causes the court significant concern. The Federal judicial process is not one in which one complies with the law and provide the necessary evidence "only when caught."

At the hearing xxxxxxxx

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

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

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

~~The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Nicholaus Alexander Bailey ("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 February 17, 2021, as amended to authorize and ratify the dividends paid by Trustee for months 1 through 15, 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. 18-25432-E-13 PSB-1 VANESSA TRISTANT CONTINUED MOTION TO MODIFY PLAN
2-3-21 [30]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 3, 2021. By the court's calculation, 48 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm is xxxxx.

The debtor, Vanessa Tristant ("Debtor") seeks confirmation of the Modified Plan because Debtor separated from her husband and is currently in the process of divorce, and has had other costs to take care of and as a result missed payments. Declaration, Dckt. 33. The Modified Plan provides payments of $150.00 for months 29 through 60, and a 39.52% percent dividend to creditors with unsecured claims totaling $33,407.35. Modified Plan, Dckt. 30. 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 March 8, 2021. Dckt. 42. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor is delinquent in plan payment.

B. Trustee is not certain whether the modified plan is justified based on lack of knowledge about Debtor's auto expense.

DISCUSSION

Delinquency

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

Trustee does indicate an electronic payment for $150.00 is pending. At the hearing the Trustee confirmed that the arrearage has been cured.

Auto Expense

Trustee is not certain what Debtor's actual or projected auto expense is. While there is an auto expense in Schedule J, no creditor is listed as either Class 2 or Class 4 for this expense. Debtor's Schedule A/B had identified a 2008 Ford F250 in the name of non-filing spouse which should be clarified now that Debtor is separated and divorcing.

Debtor filed a Response on March 16, 2021 stating that her former spouse has the 2008 vehicle, but that per the divorce settlement, she is now responsible for the payment of a Ford F150 purchased in 2018. Dckt. 45. Debtor will file Supplemental schedules to account for the $550 payment.

Debtor filed Supplemental Schedule J on March 16, 2021. Dckt. 48. Debtor now lists a car payment for $550.00 and has reduced the entertainment expense from $100.00 to $50.00. Where Debtor has two teenagers (ages 15 and 17) living with her, a budget of $50 for entertainment purposes does not seem realistic.

MARCH 23, 2021 HEARING

At the hearing the Trustee stated that the Supplemental Schedule J "tends" to support the Plan, but still does not show spousal support. However, it appears that this can be quickly addressed and verified by Debtor with a short continuance.

MARCH 30, 2021 HEARING

At the hearing xxxxxxxx

FINAL RULINGS

20. **21-20310-E-13** **TIESHA FISHER**
APN-1 **Jason Vogelpohl**

OBJECTION TO CONFIRMATION OF PLAN BY TOYOTA MOTOR CREDIT CORPORATION
2-23-21 [14]

Final Ruling: No appearance at the March 30, 2021 hearing is required.

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, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on February 23, 2021. By the court's calculation, 35 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

Toyota Motor Credit Corporation ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

A. Debtor's proposed interest rate is not consistent with *Till vs. Credit Corp.*

B. Debtor's Plan is not feasible.

DISCUSSION

Creditor's objections are well-taken.

Interest Rate

Creditor objects to the confirmation of the Plan on the basis that the Plan calls for adjusting

the interest rate on its loan with Debtor to 2%. Creditor's claim is secured by a Retail Installment Contract granting Creditor a security interest in personal property commonly described as 2017 Toyota Camry, vehicle identification number 4T1BF1FK5HU269505. Creditor argues that this interest rate is outside the limits authorized by the Supreme Court in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). In *Till*, a plurality of the Court supported the "formula approach" for fixing post-petition interest rates. *Id.* Courts in this district have interpreted *Till* to require the use of the formula approach. *See In re Cachu*, 321 B.R. 716 (Bankr. E.D. Cal. 2005); *see also Bank of Montreal v. Official Comm. of Unsecured Creditors (In re American Homepatient, Inc.)*, 420 F.3d 559, 566 (6th Cir. 2005) (*Till* treated as a decision of the Court). Even before *Till*, the Ninth Circuit had a preference for the formula approach. *See Cachu*, 321 B.R. at 719 (citing *In re Fowler*, 903 F.2d 694 (9th Cir. 1990)).

The court agrees with the court in *Cachu* that the correct valuation of the interest rate is the prime rate in effect at the commencement of this case plus a risk adjustment. Because the creditor has only identified risk factors common to every bankruptcy case, the court fixes the interest rate as the prime rate in effect at the commencement of the case, 3.25%, plus a 1.00% risk adjustment, for a 4.25% interest rate. The objection to confirmation of the Plan on this basis is sustained. *See* 11 U.S.C. § 1325(a)(5)(B)(ii).

Creditor's Objection to Confirmation requests the Court delay confirmation of the Plan thirty (30) days "so that Secured Creditor can propound written discovery to develop the evidence to establish a reasonable rate of interest under the *Til* decision." Objection, Dckt 14, ¶ 2.

Rather than continuing the hearing, applying what might be misperceive by various debtor counsel as a "you only have to comply with the law if you get caught," the court denies confirmation where there is such a gross departure from well established applicable law.

Failure to Afford Plan Payment

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor's plan at the time of filing of this Objection, with the 2 percent interest rate, calls for payments of $412.00 for 60 months. Plan, Dckt. 3. Debtor's Schedule J, filed January 28, 2021, shows a net monthly income of $412.88. According to Creditor, Debtor's Plan relies on a 2 percent interest rate, and any increase would make the plan unfeasible. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Court's Review of the Docket

A review of the docket shows that Debtor has since filed two amended plans. The first, filed February 26, 2021, calls for one (1) payment of $412.00, then $430.00 for the duration of the plan and provides for Creditor's Class 2 claim at 5% interest on $16,939.05, with a monthly dividend of $300.00. Dckt. 20, §2.01, §3.08.

The second proposed plan, filed March 18, 2021, calls for two (2) payments of $412.00, then $439.00 for 58 months and provides for Creditor's claim at 5% interest on $16,939.05, with a monthly dividend of $250.00. Dckt. 31, §2.01, §3.08. Additionally Debtor's most recent Amended Schedule D, February 26, 2021, lists the estimated value of the 2017 Toyota Camry securing this claim at $10,425.00. Dckt. 22 §2.2. Debtor has not as of March 24, 2021, filed a motion to value collateral. Debtor has not filed updated Schedule's I and J, the most recent being those filed in start of this case, and showing a

monthly net income of $412.88. Lastly, Debtor has failed to file a Motion to Confirm this second proposed plan.

Independent Review by court

Debtor's Schedule J, filed on January 28, 2021, lists a $412.88 monthly net income, while the most recent filed Plan, March 18, 2021, Dckt. 31, provides for a $439.00 ongoing monthly payment after 2 months at $412.00. Taken together, they suggest that the Plan is not feasible. *See* 11 U.S.C. § 1325(a)(6).

The court has an independent duty to make certain that the requirements for confirmation have been met. *See United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 130 S. Ct. 1367, 1381 n.14, 176 L. Ed. 2d 158, 173 n.14 (2010); *see also Varela v. Dynamic Brokers, Inc. (In re Dynamic Brokers, Inc.*), 293 B.R. 489, 499 (B.A.P. 9th Cir. 2003) (citing *Everett v. Perez (In re Perez)*, 30 F.3d 1209, 1213 (9th Cir. 1994)).

The Debtor has subsequently filed two amended Chapter 13 Plan, which constitutes a *de facto* dismissal of the plan that is the subject of the current 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 Toyota Motor Credit Corporation ("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.

21. **19-24916-E-13** **ERIC FLEMING** **MOTION TO MODIFY PLAN**
MWB-2 **Mark Briden** **2-11-21 [26]**

Final Ruling: No appearance at the March 30, 2021 hearing is required.

The Motion to Modify Plan is dismissed without prejudice.

Eric Lawrence Fleming ("Debtor")] having filed a "Notice of Withdrawal", which the court construes to be an Ex Parte Motion to Dismiss the pending Motion on March 22, 2021, Dckt. 40; no prejudice to the responding party appearing by the dismissal of the Motion; Debtor having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by David Cusick ("the Chapter 13 Trustee"); the Ex Parte Motion is granted, Debtor's Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Modify Plan filed by Eric Lawrence Fleming (" Debtor") having been presented to the court, Debtor having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 40, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Modify Plan is dismissed without prejudice.

22. **20-22831-E-13 TJW-2** **DENNIS/KIM CAMPBELL** **Timothy Walsh** **MOTION TO CONFIRM PLAN 2-11-21 [51]**

Final Ruling: No appearance at the March 30, 2021 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on February 11, 2021. 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).

Movant chose not to serve the originally listed creditors in this case: Cavalry SPV I LLC (creditor with judgment), Bank of America (creditor with unsecured claim), Wells Fargo, Sean Ferry, Northbay Medical, and Community Trust Self Help C U. However, only Cavalry SPV I LLC and Bank of America, N.A. have filed proofs of unsecured claims.

The modification is to increase the Plan distribution to creditors with unsecured claims to 100%. The creditors who have chosen to file claims have been served.

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, Dennis Paul Campbell and Kim Cheri Campbell ("Debtor") has provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a statement of non-opposition on March 12, 2021. Dckt. 62.

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, Dennis Paul Campbell and Kim Cheri Campbell ("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 February 11, 2021, 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.

23. 19-24153-E-13 MRL-1 — GRACIELA MARTINEZ — Mikalah Liviakis — MOTION TO MODIFY PLAN — 2-15-21 [25]

Final Ruling: No appearance at the March 30, 2021 hearing is required.

Local Rule 9014-1(f)(1) Motion—No 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 February 16, 2021. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy 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).

The court has determined that oral argument will not be of assistance in rendering a decision in this matter.

The Motion to Confirm the Modified Plan is granted.

The debtor, Graciela Martinez ("Debtor") seeks confirmation of the Modified Plan because

Debtor was temporarily unemployed and incurred car repairs expenses. Declaration, Dckt. 29. The Modified Plan provides payments of $326.00 for 19 months and $425.00 for 41 months, and a zero (0) percent dividend to unsecured claims totaling $7,000.00. Modified Plan, Dckt. 27. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S LIMITED OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Limited Opposition on March 12, 2021. Dckt. 35. Trustee opposes confirmation of the Plan on the basis that Debtor is proposing to alter the monthly dividend for months 1 through 20 where Trustee has previously disbursed under the confirmed Plan.

DISCUSSION

Debtor filed a Response on March 19, 2021 addressing Trustee's concern. Dckt 38. Debtor clarifies that they do not seek to change the Trustee's prior distributions made pursuant to Debtor's confirmed Plan. Debtor confirms that the payments by the Chapter 13 Trustee are authorized and ratified by the new Plan.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Graciela Martinez ("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 February 15 2021, as amended to ratify Trustee's monthly dividends for months 1 through 20, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

24. 19-25526-E-13 MET-3 BRANDON/REBECA DOMINGUES HENDERSON Mary Ellen Terranella MOTION TO MODIFY PLAN 2-16-21 [42]

Final Ruling: No appearance at the March 30, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 16, 2021. By the court's calculation, 38 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Brandon Shane Henderson and Rebeca Domingues Gobatti Henderson ("Debtor"), has filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response indicating non-opposition on March 15, 2021. Dckt. 58. Trustee notes that he will be unable to pay post-petition priority tax claims for 2019 & 2020, (DN 42, Page 3, Lines 4-5), if the creditors do not timely file claims for those taxes.

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, Brandon Shane Henderson and Rebeca Domingues Gobatti Henderson ("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 February 16, 2021, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.