

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

March 31, 2020 at 2:00 p.m.

1.	17-24004 -C-13	STEVE RAMIREZ-FOURKILLER	MOTION TO INCUR DEBT
	DJC -3	AND TINA FOURKILLER	3-10-20 [33]
		Diana Cavanaugh	

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on March 10, 2020. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

The Motion to Incur Debt 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 Incur Debt is granted.

Steve C. Ramirez-Fourkiller and Tina Louise Fourkiller ("Debtor") seek permission to purchase 9095 Laguna Place Way, Elk Grove, California, with a total financing amount of \$396,600.00 and monthly payments of \$2,545.14.

The home and loan will be borne by the debtors and one of the debtor's parents, who will both be on title with a 1/3 share of the property. Debtor proposes paying \$1,500 monthly to the mortgage and having Debtor's parents pay \$1,045.14. Debtor argues that caring for Debtor's parents will be more economical with this living arrangement.

The Chapter 13 Trustee, David Cusick ("Trustee"), initially filed an Opposition, but then filed a Response indicating non-opposition after Debtor filed supplemental pleadings.

The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. There being no opposition from any party in interest and the terms being reasonable, the Motion is granted.

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

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

The Motion to Incur Debt filed by Steve C. Ramirez-Fourkiller and Tina Louise Fourkiller ("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 Steve C. Ramirez-Fourkiller and Tina Louise Fourkiller are authorized to incur debt to purchase 9095 Laguna Place Way, Elk Grove, California, on the financing terms described in the Motion.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on December 19, 2019. By the court's calculation, 47 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is denied.

The debtor, Evelyn J. Carr ("Debtor") seeks confirmation of the Modified Plan to cure a delinquency in payments Debtor argues was caused when her lessees did not timely pay rent. Declaration, Dckt. 37. The Modified Plan provides for \$5,974 paid through December 2019, and payments of \$1,600 for 52 months. Modified Plan, Dckt. 35. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on December 20, 2019. Dckt. 39. Trustee opposes confirmation on the following grounds:

1. The plan alludes to an Ensminger provision, proposing a \$1,175 monthly adequate protection payment where the monthly payment is currently

\$1,321.37. But, the actual provision is not included.

2. Debtor indicates a loan modification was forwarded to her, but has not provided those documents to the Trustee.
3. Debtor has not filed supplemental schedules to show her current finances-where the Debtor's rental income has been unreliable, it is unclear if the plan is feasible.

DEBTOR'S REPLY

Debtor filed a Reply on January 28, 2020. Dckt. 46. The Reply includes detailed language normally dubbed the "Ensminger provision," providing for a monthly adequate protection payment on PHH Mortgage's secured claim pending a potential loan modification, which the Debtor requests be added to the plan through the language of the order confirming the plan.

DISCUSSION

Debtor filed Supplemental Schedules I and J on December 20, 2019. Dckt. 42. Schedule I shows a \$1,400 drop in rental income. Dckts. 1, 42. In the Motion and Declaration, it is not clear why Debtor has given up entirely on renting. Schedule I also shows \$403 in income from "Calfresh" on behalf of the Debtor and Debtor's dependent adult son.

Schedule J shows expenses were reduced by roughly \$400 a month. Dckts. 1, 42. The reduced expenses include utilities, food, clothing, personal care, medical/dental, entertainment, transportation, and charitable donation. Reductions nearly across the board.

Debtor filed a declaration to explain some of the changes. Dckt. 43. The Declaration only lists the decreases to food, cleaning products, and personal care products, explaining that the reduction is because Debtor and his son "get Calfresh to use on food and cleaning and personal."

It is unclear why Calfresh is treated as both income, and as a way to reduce expenses. Likely it should only be treated as the former.

The court shares the Trustee's concern over Debtor's ability to make payments. The sudden drop in expenses where Debtor has already struggled to make payments casts doubt as to whether the plan is feasible. 11 U.S.C. § 1325.

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, Evelyn J. Carr ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 18, 2020. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy 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 debtors, Jared Ruben Bartolome Ildefonso and Lindsay Marinas Mangoba Ildefonso ("Debtor") seek confirmation of the Modified Plan. The Modified Plan provides for \$76,736.00 paid through December 2019, and for payments of \$5,200 for 41 months commencing February 2020. Modified Plan, Dckt. 56. 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 13, 2020, opposing confirmation on several grounds. Dckt. 64. However, Trustee later filed a Status Report on March 24, 2020, indicating non-opposition so long as the plan removes the following language from the Additional provisions of the plan:

6. Payments made by the Debtor shall be disbursed in the

following manner:

The priority debt of the Department of Treasury, IRS shall be paid at least \$590.00 per month until paid in full.

The priority debt of the CA Franchise Tax Board shall be paid at least \$110.00 per month until paid in full.

Unsecured creditors shall be paid \$540 per month from February 2020 through end of Plan for an increase of 25%.

Trustee argues these provisions would create an undue burden to administer.

DISCUSSION

At the hearing, Debtor's counsel reported whether Debtor is amenable to removing the provisions specified above **XXXXXXXXXXXXXXXXXX**.

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, Jared Ruben Bartolome Ildefonso and Lindsay Marinas Mangoba Ildefonso ("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 **XXXXXXXX**.

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

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

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

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

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

The Motion to Impose the Automatic Stay is denied.

Deandra Renee Jackson ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) imposed in this case. Debtor has had four (4) cases dismissed within the year prior to filing this case.

Debtor in her Declaration explains her prior case was dismissed because her attorney failed to file all documents timely, and due to the attorney's lack of communication, distance, and limited staff. Dckt. 13.

Debtor testifies she has now hired Pete Macaluso as counsel, and is "confident of his ability to represent me, the communication between us, and proposition of a solid Chapter 13 Plan . . ." Id.

TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on February 26, 2020. Dckt. 15. Trustee argues Debtor has not rebutted the presumption of bad faith, has not put forward a feasible plan, and has not addressed the proper code section.

CREDITOR'S OPPOSITION

Creditor Maria Padilla-Angel ("Creditor") filed an Opposition on March 6, 2020. Dckt. 26. The Creditor is a lessor of real property, and argues that three bankruptcy cases were filed after Debtor executed her lease on October 10, 2019. Creditor provides detailed overview of conflicting information the Debtor provided as to where her principal residence is in the current and recent filings.

MARCH 10 HEARING & SUPPLEMENTAL PLEADINGS

At the March 10, 2020, hearing the court continued the hearing to allow Debtor to file supplemental pleadings and evidence. Civil Minutes, Dckt. 29.

The Trustee filed a Status Report on March 24, 2020, noting nothing had been filed and arguing the motion should be denied. Dckt. 32.

The Debtor filed her supplemental Declaration and Exhibit on March 26, 2020. Dckts. 34, 35. Together those pleadings seek to show that Debtor received \$2,280.00 from her new employer on March 11, 2020.

APPLICABLE LAW

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

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

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

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

(III) there has not been a substantial change in the

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

11 U.S.C. § 362(c) (4) (D) .

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

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

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

Review of Prior Filings

Debtor has an extensive case history, listed as follows:

Case No.	Filing Date	Date Dismissed
04-23720	4/12/2004	7/22/2004 (Ch. 7 discharge received)
06-24743	11/13/2006	10/24/2008
09-47849	12/21/2009	7/30/2012
12-34671	8/10/2012	12/18/2012
13-27271	5/29/2013	2/7/2014 (Ch. 7 discharge received)
14-30880	11/3/2014	2/20/2015
15-21311	2/20/2015	6/2/2017
17-24770	7/20/2017	4/27/2019
19-22901	5/6/2019	9/27/2019
19-26376	10/11/2019	10/29/2019
19-27160	11/18/2019	2/17/2020

From the above, it is clear Debtor is a serial filer, and a permanent resident of the Bankruptcy Court. Debtor has completed two Chapter 7 cases, both with no distribution of assets. Debtor has filed 10 Chapter 13 cases, with one pending and 9 dismissed for various failures to comply with the Bankruptcy Code.

Argument provided in Debtor's Motion

The Motion does not provide a robust discussion of Debtor's prior cases, why they failed, and what changed for this case. The Motion states:

Good cause exists for the granting of the Motion to Impose Automatic Stay as to all creditors in this case. The imposition is necessary to protect the Debtor's assets, absent the instant filing as the Debtor's current case overcomes any presumption of bad faith.

Based on the aforementioned elements, the instant case was filed in order to protect Debtor's vehicle from repossession action. The Debtor is a cook for the Tracy Unified School District, and begins March 1, 2020, with a current gross monthly income of \$5,000.00, deductions of \$950.00, and a net monthly income of \$4,050.00.

Further, Debtor's Schedule I and B22C reflect that she is earning enough wages and money to cover all her necessary obligations in addition to the proposed Chapter 13 plan. The Debtor reflects reasonable and necessary expenses of approximately \$3,725.00, allowing for a monthly plan payment of \$325.00, the ability to fund the current plan, and obtain a discharge (See In re Charles, 334 B.R. 207, 219 (Bank. S.D.Tex. 2005)).

Lastly, there is no indication that the Debtor engaged in any type of scheme or other operation to abuse the bankruptcy process. Refer to Declaration of Debtor filed herewith.

Motion, Dckt. 10.

The above is merely a collection of facts and conclusion, with no analysis. Debtor's counsel concludes good cause exists to grant the motion, and there is no indication of a scheme to abuse the bankruptcy process. It is unclear why Debtor's counsel thinks so. The conclusions seem to be a part of a template form, which counsel has just filed in hopes the court will do his work for him.

The facts listed are presumably included to show Debtor is capable of prosecuting her case. But, the prior case history shows otherwise, and Debtor's counsel has not at all explained that history away.

Information Provided in Debtor's Declaration

Some of the Debtor's arguments are only in her declaration. As the court discussed above (and not stated with particularity in the Motion), the Debtor argues:

1. **I filed my previous 2019 Chapter 13 bankruptcy case** because I was not able to meet with **my counsel personally because she was always too busy**. I sent her all the documents and awaited the continued meetings. **Because she blew the first case she agreed to represent me in the second case. When that case was filed she had all the documents, then on October 31, 2019 I found out that she had failed to submit the documents timely and again the second case was dismissed.**

2. I am refiling bankruptcy due to financial hardship. **The last case failed because my attorney did not take the time to insure that the Trustee had all the documents timely.**

3. Since my previous case was dismissed, my circumstances have changed as I have taken a job with the Tracy School District, which is a steady employee position rather than an independent contractor running to each school each day of the week.

4. I have acquired any new debt since my previous case was dismissed.

5. I understand that I have filed a number of bankruptcy cases in my lifetime and understand that I must just clear these debts and pay for my car. I am 55 years old and never thought that I would be seeking protection yet again. I thought that my previous cases were dismissed due to a lack of communication with my attorney, the distance between us, and the limited staff support that she had which are now remedied.

6. I have hired attorney, Peter Macaluso, and I am confident of his ability to represent me, the communication between us, and proposition of a solid Chapter 13 Plan that will allow me to pay my creditors to the best of my ability, keep my car, and getting to work everyday.

Dckt. 13(emphasis added).

In sum, Debtor argues her prior case failed because of her attorney, and now she has a new attorney, and she has confidence in his abilities.

These arguments are not well-taken. First, there is no actual detail provided. Debtor does not say what documents were provided to her counsel and not filed.

But, more glaring, Debtor does not explain why-if dismissal was solely her counsel's fault-she has had a total of 9 dismissed Chapter 13s. Debtor has not explained why, if everything is her counsel's fault, she received the extraordinary relief of a Chapter 7 discharge twice, and still had to file 10 Chapter 13 cases.

Debtor argues she is confident in her current counsel's ability. But, Debtor has already employed that counsel in one of her many failed cases, no. 17-24770.

It is Debtor's burden to rebut a presumption of bad faith. Debtor has not done that.

Conclusion

Debtor has not sufficiently rebutted the presumption of bad faith under the facts of this case and the prior cases for the court to impose the automatic stay.

Debtor has been in bankruptcy nearly every year for the past 16 years. With 9 dismissed Chapter 13 cases and two no-asset Chapter 7s, Debtor's sole argument is that her attorney in the recent prior cases failed her. That argument is disingenuous.

The Motion is denied.

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

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

The Motion to Impose the Automatic Stay filed by Deandra Renee Jackson ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied.

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

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 5, 2020. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

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

- A. The plan proposes a \$0 dividend on the prepetition arrearages of RANlife, which were scheduled at \$13,061.47.
- B. Debtor's plan lists the claim of RANlife as both Class 1, and in section 4.02 as an executory lease.
- C. The plan proposes valuing the secured claim of Flagship Credit, which the Proof of claim indicates was a purchase money security interest debt incurred within 910 days of filing the petition.
- D. The plan proposes avoiding the judicial lien of

Unifund CCR Partners, but the court has yet to issue an order avoiding that lien.

Trustee filed a Status Report on March 24, 2020, indicating the grounds for objection remain. Dckt. 35.

DISCUSSION

The current proposed plan has not been demonstrated to be feasible. The plan does not provide for the \$13,061.47 in prepetition arrearages to creditor RANlife, and that claim is provided for twice in the plan. The plan also proposes valuing a secured claim which cannot be valued pursuant to the hanging paragraph of 11 U.S.C. § 1325(a)(9). That is reason to deny confirmation. 11 U.S.C. § 1325(a)(6).

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 29, 2020. By the court's calculation, 62 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

<p>The Motion to Confirm the Amended Plan is denied.</p>

The debtor, Gary Alan Howe ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for \$13,350.00 paid in month 3, \$38,800 paid in month 6, \$9,700 paid from months 7-12, and a \$600,000 lump sum from real property sale proceeds on or before August 21, 2020. Amended Plan, Dckt. 76. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on March 16, 2020. Dckt. 84. Trustee opposes confirmation on the following grounds:

1. Debtor is \$38,800 delinquent in plan payments.
2. The plan proposes selling real property used in connection with Debtor's business without court approval, with no specific details of sale, and in lieu of a monthly arrearage payments to Class 1

claims or any payment to Class 2 claims.

CREDITOR'S OPPOSITION

Bank of New York Mellon, as Trustee ("Creditor"), filed an Opposition on March 17, 2020. Dckt. 87. Creditor opposes confirmation of the plan due to its failure to provide regular equal monthly payments, which Creditor argues shows the plan is not feasible, and not proposed in good faith. Creditor also points to the speculative nature of the potential sale of real property as casting doubt as to feasibility.

TRUSTEE'S STATUS REPORT

Trustee filed a status Report on March 24, 2020, reporting Debtor is still delinquent in plan payments. Dckt. 89.

DISCUSSION

The current proposed plan has not been demonstrated to be feasible. The Debtor is delinquent in plan payments, just like Debtor was under the most recent prior proposed plan. Civil Minutes, Dckt. 79. Additionally, the Plan proposes a lump sum of \$600,000 in August 2020 from real property sale proceeds, but little detail has been provided as to the likelihood of a sale. Debtor not having demonstrated the plan is feasible is reason to deny confirmation. 11 U.S.C. § 1325(a)(6).

Furthermore, the plan proposes sporadic payments to secured creditors, rather than equal monthly payments as required by 11 U.S.C. § 1325(a)(5)(B)(iii)(I).

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

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

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

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

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

7. [19-27957](#)-C-13 LOUIE/SHARDALAI GILLIGAN CONTINUED OBJECTION TO
[DPC](#)-1 Ronald Holland CONFIRMATION OF PLAN BY DAVID
P. CUSICK
2-12-20 [[28](#)]

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

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

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

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

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

The hearing on the Objection to Confirmation of the Plan is continued to May 12, 2020, at 2:00p.m.

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

- A. The debtors, Louie Graham Gilligan and Shardalai Monique Gilligan ("Debtor") did not appear at the February 6, 2020, Meeting of Creditors.
- B. Debtor's plan proposes valuing the secured claim of Toyota Motor Credit. A motion for the purpose is set for hearing February 25, 2020.
- C. Debtor's did not list a prior case filed in 2018 on Debtor's petition.

MARCH 10, 2020 HEARING

At the March 10 hearing the parties requested a continuance to allow Debtor to appear at the Continued Meeting of Creditors. Dckt. 33.

TRUSTEE'S STATUS REPORT

Trustee filed a Status Report on March 24, 2020, requesting a continuance to May 10, 2020, due to COVID-19 restrictions on 341 Meetings. Dckt. 36.

DISCUSSION

In light of the Trustee's request and good cause appearing, the court will continue the hearing to May 12, 2020.

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 hearing on the Objection to Confirmation of the Plan is continued to May 12, 2020, at 2:00 p.m.

THRU #9

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the 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 the US Trustee on March 5, 2020. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.
--

Bank of America, N.A. ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that there are \$61,525.63 in prepetition arrearages on its claim, which Debtor does not propose a monthly payment on (instead proposing a sale of debtor's residence within 6 months, or modification to provide for the claim by payments or surrender).

DISCUSSION

The debtors have not carried their burden of showing the plan is feasible. The current proposed plan proposes a sale of debtors' residence within 6 months, and if that fails then either a a payment plan or surrender.

Debtors have not shown any likelihood of a sale within 6 months. Debtors previously had a case filed March 2018 and dismissed August 2019

which also proposed selling the same property. Debtor has not hired a broker, and it is unclear what if any steps have been taken to effect the sale. That is reason to deny confirmation. 11 U.S.C. § 1325(a)(6).

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

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

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

The Objection to the Chapter 13 Plan filed by Bank of America, N.A. ("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.

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 5, 2020. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.
--

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

- A. Debtors are \$4,500 delinquent in plan payments.
- B. The plan relies on the sale of real property within 6 months, which the Trustee does not believe is likely to happen. Debtors previously had a case filed March 2018 and dismissed August 2019 which also proposed selling the same property.
- C. Debtors received a \$8,894 tax refund in 2018, and has not committed any future refunds to the plan.
- D. Debtors have nonexempt equity of \$39,737.75, but only propose to pay \$32,207.00 to unsecured claims.

March 31, 2020 at 2:00 p.m.

Trustee filed a Status Report on March 24, 2020, indicating the grounds for objection remain. Dckt. 46.

DISCUSSION

Debtors are delinquent in plan payments. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. See 11 U.S.C. § 1325(a)(6).

Debtors have also not shown any evidence that the proposed sale of property will occur. Debtor has not hired a broker, and it is unclear what if any steps have been taken to effect the sale. That is reason to deny confirmation. 11 U.S.C. § 1325(a)(6).

Additionally, Debtors have nonexempt equity of \$39,737.75, but only propose to pay \$32,207.00 to unsecured claims. Therefore, Debtor's plan fails the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4).

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

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

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

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

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

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

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, 2020. By the court's calculation, 41 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The hearing on the Motion to Confirm the Modified Plan is continued to May 12, 2020 at 2:00 p.m.

The debtor, Aren Parnell Jackson ("Debtor") seeks confirmation of the Modified Plan to address a plan payment delinquency, as well as account for changes in income and expenses. The Modified Plan provides for \$35,217.00 paid in through February, 2020, and payments of \$2,485 thereafter. Modified Plan, Dckt. 103. 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, 2020. Dckt. 112. Trustee opposes confirmation on the following grounds:

1. Debtor included an Ensminger Provision that deviates from what is typically approved.

2. Debtor states he commenced a HAMP application but has not filed evidence of that application.
3. Debtor's confirmed plan relied on \$2,400 in monthly contributions from Debtor's mother and daughter, and Debtor defaulted under the plan. Amended Schedule I reduces the monthly contribution to \$100, but Trustee does not believe the contributions are reliable.
4. Debtor's Supplemental Schedule I now includes a voluntary retirement contribution of \$70.00.
5. Supplemental Schedule J does not include expenses for taxes and insurance.

TRUSTEE'S STATUS REPORT

Trustee filed a Status Report on March 24, 2020. Dckt. 116. Trustee notes the grounds for opposition remain, but that he and Debtor's counsel desire a continuance to May 10, 2020, based on remote access preparations.

DISCUSSION

Based on the Trustee's request and good cause appearing, the hearing on the Motion is continued to May 12, 2020 at 2:00 p.m.

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, Aren Parnell Jackson ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Motion to Confirm the Modified Plan is continued to May 12, 2020 at 2:00 p.m.

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

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

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 3, 2020. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is XXXX

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

- A. The plan proposes paying student loans directly as an expense, which unfairly discriminates against other unsecured creditors.
- B. Debtor has claimed exemptions pursuant to California Civil Code of Procedure section 703.140 and appears married, but has not filed a spousal waiver.
- C. Trustee is not clear what Debtor's marital status is since he indicates on the Statement of Financial Affairs he is not married, and no income from the spouse is listed.
- D. Debtor did not provide Debtor's social security number at the Meeting of Creditors.

DEBTOR'S REPLY

Debtor filed a Reply on March 17, 2020. Dckt. 30. Debtor argues:

1. The plan does not unfairly discriminate because the student loan debt belongs to the non-filing spouse, and the non-filing spouse is not receiving a discharge.
2. A spousal waiver was filed with the court on March 12, 2020.
3. An amended Statement of Financial Affairs was filed to include the non-filing spouse's information.
4. Debtor will bring his social security card to the April 30, 2020, continued Meeting of Creditors.

TRUSTEE'S STATUS REPORT

Trustee filed a Status Report on March 24, 2020. Dckt. Trustee reports that the unfair discrimination and failure to provide a social security number have not been addressed.

DISCUSSION

Debtor has made arguments in favor of higher payments to the non-filing spouse's student loan debt essentially being a fair discrimination because (1) the debt is not going to be discharged; and (2) the non-filing spouse is contributing her income to the plan. However, no legal authority has been provided.

It is unclear whether Debtor is a co-debtor on the student loan. That would affect the analysis under 11 U.S.C. § 1322(b)(1), as to whether the court must determine if the treatment unfairly discriminates. Meyer v. Rentaria (In re Renteria), 470 B.R. 838, 843 (B.A.P. 9th Cir. 2012).

At the hearing, xxxxxxxxxxxxxx.

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

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

The 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 XXXX

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

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

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

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

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

The Objection to Confirmation of Plan is sustained.
--

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

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

on Schedule B.

FEBRUARY 11, 2020 HEARING

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

FEBRUARY 25, 2020 HEARING

At the continued hearing, the Trustee reported he was still waiting on a few documents to be provided by Debtor, and the parties requested further continuance. Dckt. 44.

March 10 Hearing & Status Report

Once again the parties reported that Debtor had not provided documents regarding Debtor's trust interest. Dckt. 47. The hearing was continued again to allow a final opportunity for the Debtor to provide the documents.

On March 24, 2020, the Debtor filed her Declaration explaining she thinks the trust is revocable because her counsel in the past asked her to revoke it. Dckt. 48. However, Debtor reports she is still waiting on documents.

The Trustee's Status Report filed March 24, 2020, confirms no documents have been received to date.

DISCUSSION

Among the Debtor's duties under the Bankruptcy Code is to cooperate with the Trustee as necessary to enable the Trustee to perform the Trustee's duties. 11 U.S.C. § 521(a)(3). By failing to provide documentation as to her trust, Debtor has failed to meet her duties under the Bankruptcy Code.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection 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 the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is sustained, and the plan is not confirmed.

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

The Motion to Impose the Automatic Stay is denied.

The debtor Lori Anderson ("Debtor") filed this Motion seeking an order either imposing or continuing the automatic stay. Dckt. 9.

The Debtor argues this relief is warranted because:

1. Debtor is trying to avoid foreclosure of his property in which debtor has been living for years. Debtor is trying to reach an agreement with Ocwen in order to be approved for a loan modification, so she can continue making affordable mortgage payments.
2. DEBTOR WANTS TO KEEP HIS PROPERTY AND CONTINUE LIVING IN IT .
3. DEBTOR IS WILLING TO PAY THE REGULAR MONTHLY PAYMENTS ONCE A LOAN MODIFICATION IS APPROVED BY Ocwen Servicing LLC.
4. Debtor have drained all resources with the bank in order to reach an agreement and to avoid foreclosure of his property. Debtor is in despair in keeping his residence and is willing to work out with the bank to avoid a trustee sale.
5. Debtor wants to keep his property and come into an agreement with the bank in order to save his house from being foreclosed. Debtor is seeking to make monthly mortgage payments, once the bank reviews, and approve a loan modification on Debtor's loan mortgage account.

DISCUSSION

When the stay is limited to 30 days by 11 U.S.C. § 362(c)(3)(A), subsection (c)(3)(B) permits the court to extend the stay beyond 30 days after notice and a hearing completed before the expiration of the 30-day period.

This case was filed January 17, 2020, and this Motion set for hearing March 31, 2020. Thus the stay already terminated before a hearing

was completed.

Therefore, the Motion is denied.

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

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

The Motion to Impose the Automatic Stay filed by Lori Anderson ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied.

FINAL RULINGS

14. [20-20298](#)-C-13 SELENIA BRITTANY CHARLES OBJECTION TO CONFIRMATION OF
[DPC](#)-1 Richard Kwun PLAN BY DAVID P. CUSICK
3-4-20 [[17](#)]

Final Ruling: No appearance at the March 31, 2020, hearing is required.

The Chapter 13 Trustee, David Cusick (the "Trustee"), having filed a Notice of Withdrawal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Objection to Confirmation was dismissed without prejudice, and the matter is removed from the calendar.**

THRU #16

Final Ruling: No appearance at the March 31, 2020, hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 3, 2020. By the court's calculation, 61 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). 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).

The hearing on the Motion to Dismiss is continued to May 27, 2020 at 9:00 a.m.

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, James Mejia ("Debtor"), is \$8,368 delinquent in plan payments.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on February 14, 2020. Dckt. 58. Debtor states a motion to confirm modified plan has been filed to address the delinquency and changes to income.

SUPPLEMENTAL JOINT-REQUEST FOR CONTINUANCE

The parties filed a Stipulation to continuance of the hearing to March 31 to allow additional time to resolve the grounds for dismissal. Dckt. 61.

STATUS REPORT & REQUEST FOR CONTINUANCE

Trustee filed a Status Report on March 24, 2020, noting the Debtor made a payment of \$7,000 in February and requesting a continuance to May 27, 2020. Dckt. 68. The Debtor filed a Request for a Continuance to the same date. Dckt. 70.

DISCUSSION

In consideration of the request by the parties and good cause appearing, the hearing on the Motion to Dismiss is continued to May 27, 2020 at 9:00 a.m.

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

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

The Motion to Dismiss the Chapter 13 case filed by 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 hearing on the Motion to Dismiss is continued to May 27, 2020 at 9:00 a.m.

Final Ruling: No appearance at the March 31, 2020, 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, creditors, parties requesting special notice, and Office of the United States Trustee on February 14, 2020. By the court's calculation, 46 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 hearing on the Motion to Confirm the Modified Plan is continued to May 27, 2020 at 9:00 a.m.

The debtor, James Mejia ("Debtor") seeks confirmation of the Modified Plan to address reduced income after Debtor became injured and the resulting plan payment delinquency. Declaration, Dckt. 55. The Modified Plan provides for \$16,416.00 paid through month 4, and for payments of \$6,450 thereafter. Modified Plan, Dckt. 54. 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 13, 2020. Dckt. 63. Trustee opposes confirmation on ground that Debtor is \$5,900 delinquent under the proposed plan.

DISCUSSION

In response to the Trustee's Motion To Dismiss (Dckt. 46), the parties noted Debtor made a \$7,000 payment in February 2020 and requested a continuance to May 27, 2020 at 2:00 p.m.

The court will continue the hearing on this Motion as well to allow Debtor to make payments and demonstrate the plan is feasible as required by 11 U.S.C. § 1325(a)(6).

March 31, 2020 at 2:00 p.m.

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, James Mejia ("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 hearing on the Motion to Confirm the Modified Plan is May 27, 2020 at 9:00 a.m.

Final Ruling: No appearance at the March 31, 2020, hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 19, 2020. By the court's calculation, 41 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 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 denied as moot.
--

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Subsequent to the filing of this Motion, the debtor, Shauna Tara Jean ("Debtor"), filed a new Amended Plan and corresponding Motion to Confirm on March 18, 2020. Dckts. 52, 56. Filing a new plan is a de facto withdrawal of the pending plan. The Motion to Confirm the Amended Plan is denied as moot, 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 Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Shauna Tara Jean ("Debtor"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause

March 31, 2020 at 2:00 p.m.

appearing,

IT IS ORDERED that the Motion is denied as moot, and the proposed Chapter 13 Plan is not confirmed.

18. [18-27027](#)-C-13 TAMMY/BETTY CONTINUED MOTION TO CONFIRM
[BB-4](#) POTTER-GODDARD PLAN
Bonnie Baker 12-9-19 [[82](#)]

Final Ruling: No appearance at the March 31, 2020, hearing is required.

The Motion To Confirm is dismissed without prejudice.
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The debtors Tammy and Betty Potter-Goddard filed a new Motion To Confirm on March 18, 2020, seeking to set a confirmation hearing for April 28, 2020. Dckt. 116. The court construes the filing of the new motion as a withdrawal of this Motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041. Therefore, the Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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 filed by the debtors Tammy and Betty Potter-Goddard 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 dismissed without prejudice.

THRU #20

Final Ruling: No appearance at the March 31, 2020, hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 18, 2020. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

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

The Motion to Incur Debt is granted.

Roldan Biansat Sebedia ("Debtor") seeks permission incur debt in the form of a loan modification as to his first mortgage, held by Arvest Mortgage Company, secured by his residence known as 5073 Trailside Drive, El Dorado Hills, California.

The Motion summarizes the current terms as follows:

Principal Balance: \$512,628.28
Maturity Date: March 1, 2048
Interest Rate: 4.625%
Monthly Payment: \$3,256.29

The Motion summarizes the modified terms as follows:

Modified Principal Balance: \$535,576.40
Modified Start Date: January 1, 2020
Modified Maturity Date: January 1, 2060
Modified Interest Rate: 4.625%

Modified Principal and Interest: \$2,450.95
Modified Initial Escrow Amount: \$986.08
Modified Monthly Payment: \$3,437.03

The primary purpose of the loan modification is to cure prepetition arrearages, which totaled \$21,223.08 as of the filing date.

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response and then a Status Report, both indicating non-opposition to the relief requested. Dckts. 69, 75.

The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. There being no opposition from any party in interest and the terms being reasonable, the Motion is granted.

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

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

The Motion to Incur Debt filed by Roldan Biansat Sebedia ("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 Roldan Biansat Sebedia is authorized to incur debt in the form of a loan modification as to Arvest Mortgage Company's claim secured by 5073 Trailside Drive, El Dorado Hills, California, on the financing terms described in the Motion.

Final Ruling: No appearance at the March 31, 2020, hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 18, 2020. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The hearing on the Motion to Confirm the Modified Plan is continued to May 12, 2020 at 2:00 p.m.

The debtor, Roldan Biansat Sebedia ("Debtor") seeks confirmation of the Modified Plan. The Modified Plan provides for f \$26,325.00 paid through January 2002, and for payments of \$1,775 for 8 months and \$2,435 for the remainder of the plan term. Modified Plan, Dckt. 66. 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 13, 2020. Dckt. 72. Trustee opposes confirmation on the following grounds:

1. The Debtor reports in the Supplemental Schedule J having a \$1,000 monthly expense for car rental. Debtor indicates this expense was present at the beginning of the case, despite the Supplemental Schedule J (filed almost a year after the petition)

March 31, 2020 at 2:00 p.m.

containing the first mention of the expense.

2. Debtor has not provided current pay advices, bank statements, or other support for the Supplemental Schedule I's stated income.

Trustee filed a Status Report on March 24, 2020, requesting the motion be denied or the hearing continued to May 10, 2020. Dckt. 76.

DISCUSSION

In light of the Trustee's request, the court shall continue the hearing to May 12, 2020, to allow Debtor to address the Trustee's grounds for opposition.

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, Roldan Biansat Sebedia ("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 hearing on the Motion to Confirm the Modified Plan is continued to May 12, 2020 at 2:00 p.m.

Final Ruling: No appearance at the March 31, 2020, hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Chapter 13 Trustee, and Office of the United States Trustee on February 20, 2020. By the court's calculation, 40 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 Motion To Determine Final Cure and Payment has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b) (1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f) (1) (B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest, if any, 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 Determine Final Cure and Payment is granted, and the court determines that debtor has paid in full the amount required to cure any default on the claim.

The debtor, Joseph Ryan Himmel ("Debtor"), filed this Motion To Determine Final Cure and Payment seeking a determination that Debtor has paid in full the amount required to cure any default on the secured claim held by Auburn Greens Homeowners Association.

The Creditor only filed a "Withdrawal of Response" as rely to the Motion (the 'Response' not appearing on the docket). Dckt. March 16, 2020. It also amended its Proof of claim, No. 4-3, to state a claim for \$0.00.

The court interprets the withdrawal and the claim for \$0.00 effectively to be a non-opposition to Debtor's argument that Debtor has paid in full the amount required to cure any default on the claim. Therefore, the Motion is granted.

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

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

The Motion To Determine Final Cure and Payment filed by the debtor Joseph Ryan Himmel 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 Determine Final Cure and Payment is granted, and the court determines that debtor has paid in full the amount required to cure any default on the claim.

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

Final Ruling: No appearance at the March 31, 2020, hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 17, 2020. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

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

The Motion to Incur Debt is granted.

Reina Carolina Montes ("Debtor") seeks permission incur debt in the form of a loan modification as to his first mortgage, held by Selene Finance, secured by his residence known as 7754 McBride Way, Sacramento, California.

The Motion states the modified loan amount is \$213,500, with a payment of \$1,091.87 at 4.250% interest and a maturity date of February 1, 2050.

The loan modification also eliminates prepetition arrearages, which total \$37,344.32 as of the petition date.

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response and then a Status Report, both indicating non-opposition to the relief requested. Dckts. 168, 175.

The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. There being no opposition from any party in interest and the terms being reasonable, the Motion is granted.

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

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

The Motion to Incur Debt filed by Reina Carolina Montes ("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 Reina Carolina Montes Sebedia is authorized to incur debt in the form of a loan modification as to Selene Finance's claim secured by 7754 McBride Way, Sacramento, California, on the financing terms described in the Motion.