UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

Pursuant to District Court General Order 612, no persons are permitted to appear in court unless authorized by order of the court. All appearances of parties and attorneys shall be telephonic through CourtCall, which advises the court that it is waiving the fee for the use of its service by *pro se* (not represented by an attorney) parties through April 30, 2020. **The contact information for CourtCall to arrange for a phone appearance is: (866) 582-6878**.

April 7, 2020 at 3:00 p.m.

---

1. **20-21707-E-13** **MARIO BUENO** **MOTION TO EXTEND AUTOMATIC STAY**
PGM-1 **Peter Macaluso** **3-24-20 [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, Chapter 13 Trustee, creditors, and Office of the United States Trustee on March 24, 2020. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The Motion to Extend the Automatic Stay is granted.

Mario Guadalupe Bueno ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 14-31025) was dismissed on February 20, 2020, after Debtor defaulted in plan payments and failed to complete plan after the sixty (60) month term expired. *See* Order, Bankr. E.D. Cal. No. 14-31025, Dckt. 71, February 20, 2020. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because he lost his job and his father passed away. Debtor currently has stable employment, he has not acquired any new debt since his previous case was dismissed, and has hired an attorney to help prosecute his case successfully.

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 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 Mario Guadalupe Bueno ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes and parties, unless terminated by operation of law or further order of this court.

2. **18-27651-E-13** **VIVIAN TOLIVER** **MOTION TO MODIFY PLAN**
PGM-1 **Peter Macaluso** **2-26-20 [60]**

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 26, 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 Motion to Confirm the Modified Plan is granted.

The debtor, Vivian Toliver ("Debtor") seeks confirmation of the Modified Plan because she

was denied a loan modification. Declaration, Dckt. 63. The Modified Plan provides payments of $150.00 for the remaining twenty-two (22) months of the thirty-six (36) month term, and a 0 percent dividend to unsecured claims totaling $53,939.15. Modified Plan, Dckt. 65. 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 24, 2020. Dckt. 67. Trustee opposes confirmation of the Plan on the basis that:

A. The additional provisions propose terms the Trustee is unable to administer.

DISCUSSION

Additional Provisions

Debtor's language in the additional provisions indicates the balance on hand as of February 26, 2020 was $1,112.50, and proposes the Trustee disburse $900.00 toward administrative expenses from those funds. However, as of February 28, 2020, the Trustee disbursed $540.00 in attorney's fees and $572.50 in priority claims from the $1,112.50 balance.

Debtor's Response and Amendment

In her Response, filed on March 31, 2020, Debtor agrees with the Trustee's analysis of the additional provisions regarding disbursement of the funds on hand.

Debtor requests that the following language be stricken from the plan in the Order: "Balance on hand as of February 26, 2020 = $1,112.50 Trustee is to disburse funds on hand as follows: $900.00 to administrative expense pursuant §3.06." Dckt. 70.

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, Vivian Toliver ("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 27, 2020, as amended to delete the "Balance on hand as of February 26, 2020 = $1,112.50 Trustee is to disburse funds on hand as follows: $900.00 to administrative expense pursuant §3.06" in the proposed plan, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the

Chapter 13 Plan, including the above amendment, 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.

3.	**20-21562-E-13** **RWH-1**	**SALLY MUNGWA** **Ronald Holland**	**MOTION TO EXTEND AUTOMATIC STAY** **3-19-20 [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)(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 17, 2020. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

The Motion to Extend the Automatic Stay is granted.

Sally Laura Mungwa ("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. 17-25534) was dismissed on February 13, 2020, after Debtor failed to cure default in plan payments, or obtain approval of a modified plan. *See* Order, Bankr. E.D. Cal. No. 17-25534, Dckt. 48, February 13, 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 she experienced a reduction in income after missing work due to pregnancy related illness. Her health has since improved.

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 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 Sally Laura Mungwa ("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. **15-26319-E-13 MET-2** **VIRGINIA PAYTON** **Mary Ellen Terranella** **MOTION TO MODIFY PLAN** **2-19-20 [62]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on February 19, 2020. By the court's calculation, 48 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is xxxxx.

The debtor, Virginia Ann Payton ("Debtor") seeks confirmation of the Modified Plan because she fell behind on plan payments after encountering unexpected and very expensive auto repairs in January. Declaration, Dckt. 67. The Modified Plan provides:

(1) payments of $2,104.00 for 53 months,
(2) followed by a payment of $2,295.00 for one (1) month,
(3) and monthly payments $2,904.00 for six (6) months,
(4) with a 0% percent dividend to unsecured claims totaling $1,419.00.

Modified Plan, Dckt. 64.

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 24, 2020. Dckt. 76. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor is delinquent in plan payments.

DISCUSSION

Delinquency

The Chapter 13 Trustee asserts that Debtor is $2,288.90 delinquent in plan payments, which represents a portion of one month of the $2,295.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

In her Response, filed on March 31, 2020, Debtor contends she made her March 2020 plan payment after the Trustee filed his opposition. Dckt. 79.

Failure to Complete Plan Within Sixty Months

Though not raised by the Trustee in the Opposition, Debtor notes in the Response that this Plan will actually now take 62 to 63 months to complete at the $2,904.00 a month plan payment. In her Response, Debtor asks the court to allow her the additional two to three months so as to complete her plan, retain her home and discharge debts she cannot afford to repay. Debtor also argues that as the plan is in near completion and only requires a small additional time to complete, creditors will not be prejudiced by such accommodation.

Further, Debtor points the court to the recently passed Coronavirus Aid, Relief and Economic Security Act (CARES Act) which provides for lengthening Chapter 13 plan terms to allow consumers to successfully complete their Chapter 13 plans.

Review of CARES Act

The court begins consideration of the request with the recently passed CARES Act. Under the Act, as it pertains to Chapter 13 debtors, Congress added subsection (d)(1) to 11 U.S.C. § 1329 to permit a debtor to modify a confirmed plan due to events flowing from the current COVID-19 pandemic. While making reference to this law, Debtor does not explain how or why she meets the statutory requirements. The new language in this section enacted by Congress states:

> (d)
> (1) Subject to paragraph (3), for a plan confirmed prior to the date of enactment of this subsection, the plan may be modified upon the request of the debtor if—
>
> > (A) the debtor is experiencing or has experienced a material financial hardship due, directly or indirectly, to the coronavirus disease 2019 (COVID-19) pandemic; and
> >
> > (B) the modification is approved after notice and a hearing.
>
> (2) A plan modified under paragraph (1) may not provide for payments over a period that expires more than 7 years after the time that the first payment under the original confirmed plan was due.

(3) Sections 1322(a), 1322(b), 1323(c), and the requirements of section 1325(a) shall apply to any modification under paragraph (1).

Restating the above statutory provisions relied upon by the Debtor into a "punch-list" for application in a bankruptcy case:

- If for a pre-March 27, 2020 confirmed Chapter 13 plan a debtor is:
  - experiencing or has experienced a "material financial hardship"
  - that is directly or indirectly due to the COVID-19 pandemic
- then the Chapter 13 plan may be modified to provide for making payments over a seven year period (two years longer than the normal five year maximum imposed by Congress under 11 U.S.C. § 1322(d)).
- Such modification to a longer period than five years continues to be subject to the contents of a plan requirements of 11 U.S.C. § 1322(a)(b), and (c), as well as the plan confirmation requirements of 11 U.S.C. § 1325(a).

Here, Debtor is not arguing that she is experiencing hardship due "directly or indirectly" to the COVID-9 health crisis. The Motion states with particularity the grounds required for modification of a Chapter 13 Plan. Motion, Dckt. 62. However, in reviewing the Motion, the court could not identify a statement as to the grounds necessitating the modification - the cause for Debtor's inability to complete the existing confirmed plan as promised.

However, in the Declaration, Debtor provides detailed testimony of the vehicle repairs in January 2020 that disrupted Debtor's economics as she entered the homestretch for completing her Plan in this 2015 filed bankruptcy case.

Additional information in the Declaration and in the Motion include: (1) the bankruptcy case was filed to protect Debtor's residence; (2) Debtor is the caretaker for her 90 year-old mother who lives with Debtor; (3) Debtor has funded the Plan with more than $111,000 to date of the Declaration; (4) Debtor also has a boarder paying rent; and (5) Debtor's mother contributes to the household expenses.

The CARES Act does not merely provide for an automatic, for whatever reason extension of Chapter 13 plans to seven years. There is a requirement that a party must plead and provide some evidence of a "material financial hardship" that is "directly or indirectly due to" the COVID-19 pandemic. Debtor does not expressly state how the financial hardship is so directly or indirectly related to the COVID-19 pandemic.

Though the court could continue the hearing and have Debtor and Debtor's counsel craft such necessary pleadings, IN CONNECTION WITH THIS HEARING ONLY, the court believes that it is proper to draw such conclusions from what has been stated with particularity in the Motion and Response, as well as testified in the Declaration of Debtor. Though the court has to squint a bit to bring it into focus, the court states its conclusions as follows.

In January 2020, as the Debtor was entering the last six months of this five year plan,

significant auto repair expenses were incurred. These repair expenses were necessary not only for Debtor's basic transportation, but to as part of her providing care for her 90 year-old mother for whom she provides full time (income generating) home care services. This repair expense occurred just as the COVID-19 pandemic travel restrictions arose, as well as effectively shutting down public transportation options.

In light of the increased COVID-19 limitation on travel, health concerns, care and maintenance (including sanitizing and taking steps necessary for Debtor and the boarder living in the same residence as the 90 year-old mother), attempting to further squeeze the budget was not practical or deemed safe.

It appears that the Trustee had a similar conclusion when squinting at the financial fine print when filing the Opposition. The Trustee's objection was that the Debtor was in default in a payment, not that the Plan would necessarily take more than the pre-CARES Act 60 month maximum.

Plan Payment Terms

At the hearing the Debtor and the Chapter 13 Trustee expressly stated on the record that the Debtor's monthly plan payment of ~~$2,904.00~~ would be made commencing with the month of **xxxxxxxxxx**, 2020 and continuing monthly thereafter through the month of **xxxxxxxxxx**, 2020, the final payment to be made under the Modified Plan.

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, Virginia Ann Payton ("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 19, 2020, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, which Order shall state the calendar months for the Debtor's ~~$2,904.00~~ monthly plan payment, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

5. **18-27720-E-13 TLW-5** **DAVID RYNDA** **Tracy Wood** **CONTINUED MOTION TO CONFIRM PLAN** **5-21-19 [213]**

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 May 22, 2019. By the court's calculation, 69 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is xxxxx.

COUNSEL'S NOTICE OF UNAVAILABILITY

Tracy Wood, counsel for the Debtor in this Case filed a Notice of Unavailability in the related Adversary Proceeding *Rynda v. Machado*, 192023 (Dckt. 98), on January 28, 2020. Debtor's counsel advised the court and opposing party that he would be unavailable for hearings in the Adversary Proceeding for the period February 25, 2020, through March 25, 2020, having previously purchased travel to visit family abroad. The court and opposing party were able to accommodate the calendaring in the Adversary Proceeding for Debtor's counsel's international "adventure."

In that Adversary Proceeding, on March 24, 2020, Debtor's counsel filed a new Notice of Unavailability of Counsel, stating in it "The reason for my unavailability is: I am stranded abroad due to Covid-19 my return flight set for 3/25/2020 has been canceled indefinitely, U.S. airports are closed, and U.S. has banned international travel indefinitely." 19-2023; Notice, Dckt. 144.

At the April 7, 2020 hearing, **xxxxxxxxxx**

February 21, 2020 Order

The court filed an Order on February 21, 2020, setting the hearing on this Motion to April 7, 2020. Dckt. 261. The hearing had originally been set for December 17, 2019. *See* September 25, 2019 Civil Minutes, Dckt. 246. It was brought to the court's attention that due to a calendaring error said hearing did not take place. Thus, the court set the hearing and all parties involved received notice on February 26, 2020. Dckt. 265.

Trustee's March 17, 2020 Opposition

On March 17, Trustee filed an Opposition. Trustee opposes confirmation on the basis that:

A. Debtor has been delinquent in plan payments since August 2019.

B. Debtor's proposed Plan referenced litigation and Debtor must clarify the status of the litigation before the court can determine the feasibility of the plan.

C. Debtor's proposed Plan calls for the sale of property if Debtor prevails on title, but does not provide a date for the sale or whether the mortgages will continue to be paid until the sale occurs.

REVIEW OF THE MOTION

The debtor, David Jerome Rynda ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for payments of $1,987.00 for 1 month, $2,197.19 for 1 month, and $2,470.52 for 58 months. Amended Plan, Dckt. 216. 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 July 9, 2019. Dckt. 225. Trustee argues Debtor is $1,814.35 delinquent in plan payments under the proposed plan, and notes that the plan contains a summary of state court litigation in the additional provisions.

MACHADO'S OPPOSITION

Elina Machado filed an Opposition on July 16, 2019. Dckt. 228. Machado argues:

1. Debtor is delinquent in plan payments.

2. Debtor includes a statement regarding litigation in the plan.

3. The plan was not proposed in good faith because it does not provide specific courses of action in the event Debtor loses or wins in the dispute of ownership of real property.

4. Debtor is paying the claims of Erika Leyva and John Rynda $100.00 monthly.

ADDENDUM TO PLAN

Debtor filed an Addendum To 8th Amended Plan on September 16, 2019. Dckt. 245. The Addendum purports to incorporate in to the present Amended Plan that the Debtor will sell his residence to fund the plan in the event his Adversary Proceeding is successful.

If, after the litigation is concluded, Debtor loses to Machado, then he will vacate the Property and turn it over to Machado.

DISCUSSION

The Chapter 13 Trustee asserts that Debtor is $1,814.35 delinquent in plan payments, which represents less than one month of the $2,470.52 plan payment. Before the hearing, another plan payment will be due. According to the Chapter 13 Trustee, the Plan in § 2.01 calls for payments to be received by the Chapter 13 Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

The court has raised, in the hearings on motions to avoid the lien of David Hicks, that creditors Erika Leyva and John Rynda had liens recorded on the eve of bankruptcy. Such secured claims would appear to be fraudulent conveyances or preferential transfers that the Chapter 13 Debtor has the fiduciary duty of a trustee to avoid for the benefit of the bankruptcy estate and creditors pursuant to 11 U.S.C. §§ 547 and 548.

Where those claims are treated as a Class 1 and receiving monthly payments, this plan potentially discriminates against other unsecured creditors. 11 U.S.C. § 1322(b)(1).

Delayed Sale Terms

One argument made at some point in time in this case by Machado is that she wants the property sold, the debts paid, and not have these obligations she is personally liable on "hanging on out there." It appears that Debtor and Machado could substantially reduce the areas of dispute by proceeding to immediately sell the property rather than waiting until after the litigation is completed and see if Debtor wins. 11 U.S.C. § 363(f) allows for the sale of property free and clear of an interest other than the bankruptcy estate when that other interest is the subject of *bona fide* dispute.

6. **19-25843-E-13** **JERLINE WALLACE** **MOTION TO CONFIRM PLAN**
PGM-3 **Peter Macaluso** **2-27-20 [80]**

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 27, 2020. By the court's calculation, 40 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied.

The debtor, Jerline Linda Wallace ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for plan payments of $1,700 for 12 months, followed by plan payments of $590.00 for 48 months, and a lump sum payments from sale of real property, with a 0% dividend for unsecured claims totaling $56,969.02. Amended Plan, Dckt. 84. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on March 17, 2020. Dckt. 95. Trustee opposes confirmation of the Plan on the basis that:

A. Motion to Confirm is merely a delay.

B. Proposed Plan fails to provide for adequate protection of a secured claim.

C. Debtor's proposed Plan fails to address a claim based on a divorce judgment.

CREDITOR'S OPPOSITION

Charles H. Evans ("Creditor"), the Debtor's ex-spouse, holding a secured claim filed an Opposition on March 23, 2020. Dckt. 98. Creditor opposes confirmation of the Plan on the basis that:

A. Motion to Confirm is brought in bad faith.

B. Debtor's Plan is not feasible.

DISCUSSION

Feasibility

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor relies on a lump sum payment related to the sale of real property. A look at the docket shows that no motion for permission to market or sell the property has been filed. Debtor proposed the same term back in September 18, 2019. Dckt. 3. The original Plan was not confirmed for failure to provide a time line and file motions to employ a broker and sell the property. Debtor finds herself in the same position six months later.

In her Response, Debtor asserts that the motion is not a delay and that the property is actively marketed at a listing price of $810,000 and being presented by Robert Peterson and Keller Williams Realty. Dckt. 100. Debtor provides a copy of the "Client One Page- Residential" for the Property. Exhibit A, Dckt. 102.

Trustee alleges that the plan fails to provide adequate protection because the proposed plan payments are not adequate protection and are incurring additional interest where the $1,020.00 payment to the creditor has property and insurance escrows of $783.70, meaning that Debtor is only paying $232.30 as adequate protection.

In her Response, as to the adequate protection of the U.S. Bank's secured claim, Debtor proposes to pay a 2% interest of $654.92 plus escrow of $659.00 for a total of $1,314.00.

Decision

This Bankruptcy Case was filed on September 18, 2019. The hearing on the Objections to Confirmation of the original proposed Plan in this case were conducted on November 26, 2019. The court now quotes some of the findings and conclusions from those rulings.

For the Trustee's Objection to Confirmation of the Original Plan filed in this case, the court's findings and conclusions include:

> Trustee alleges that the Plan is not feasible. 11 U.S.C. § 1325(a)(6). First, the first mortgage proposed payments of $1,020.00 are insufficient to pay even the $1,416.74 monthly interest and escrow on the Class 1 claim.
>
> Additionally, Debtor relies on a lump sum payment related to the sale of real property. A look at the docket shows that no motion for permission to market

or sell the property has been filed.

Thus, the Plan may not be confirmed.

. . .

Debtor's plan fails the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). Trustee states that the Plan proposes to pay a zero (0) percent dividend to unsecured claims, which total $56,969.02, yet Debtor's non-exempt equity totals $175,185.78 based on property described as 3195 Dover Avenue, Fairfield, California. Thus, the court may not approve the Plan.

Civil Minutes, Dckt. 62.

Wells Fargo Bank, N.A., a creditor with a claim secured by the real property to be sold by Debtor filed an Objection to Confirmation as well. The court's findings and conclusions relating to the proposed sale of the property, as they relate to the Wells Fargo Bank, N.A. Objection, include the following:

First, this provision does not require the sale within nine months, but appears to only be aspirational - Debtor is to sell, but not required to.

Second, it does not state within nine months of what date the sale "is" to occur. Nine months of the filing of the case? Nine months of the filing of the plan? Nine months of confirmation of the plan? Nine months of the 60th month of the plan? It is left open for the Debtor and Debtor's counsel to argue whatever is in the Debtor's advantage. This ambiguity does not appear to be inadvertent.

Third, the property to be sold is not identified. One might "assume" it is "the real property" that the Class 1 creditor has a lien against, but there is no reference to "the" property. Just some "real property."

Fourth, there are no terms for the Debtor diligently prosecuting the sale as a fiduciary as the plan administrator responsible for the marketing and sale of the property. No deadline for the broker being hired. No communications with the Chapter 13 Trustee to document the diligent prosecution of the sale.

As written, the Debtor and Debtor's counsel could argue that Debtor is not required to anything other than sometime during the 51st to 60th month of the Plan to show up with a sale of the Property.

Fifth, this bankruptcy case was filed on September 18, 2019. As of the court's November 25, 2019, review of the Docket, Debtor has not sought authorization to employ a real estate broker to market the Property so that it can be sold in a commercially reasonable manner.

Debtor has sat for sixty-nine (69) days motionless with respect to marketing this Property. This is inconsistent with a person facing foreclosure, the loss of the Property, and working to get the fair market value of the property for

the bankruptcy estate.

Civil Minutes, Dckt. 63.

Proposed Amended Chapter 13 Plan

The court reviews the proposed Amended Chapter 13 Plan and its terms, Debtor and Debtor's counsel now having gained from the experience of the prior objections:

A. Monthly Plan Payments, Amended Plan ¶ 2.01. The Monthly Plan payments are provided for in the Additional Provisions of the proposed Plan.

1. The verbatim text of the required Plan Payments as provided in the unnumbered Additional Provisions states:

PLAN PAYMENTS

$1700.00 X 12
$590.00 X 48

Plus lump sum payment from sale of real property to pay all lien holders on real property in full, on or before the 12th month

Debtor to reinvest the Exempt Equity in the Subject Property commonly known as Dover Ave., within 180 days of sale, and Trustee shall hold all proceeds in a separate segregated account

Plan Additional Provisions, Dckt. 84 at 7.

One could assume that this means that Debtor will make monthly plan payments of $1,700 for months one through twelve of the plan, and then monthly payments of $590 for months thirteen through sixty of the plan. Or it could mean possibly the reverse. Or it could mean that Debtor will pay somehow, sometime pay $20,400 ($1700 X 12) and $28,320 ($590 x 48) in some way to fund the plan.

Also, when does the Debtor begin making the payments? It is not clear. Will the payments date back to October 2019, or is the Debtor proposing having six months of a pre-plan plan period and then a sixty month plan?

2. In addition to the plan payments in the Additional Provisions, other payments are provided for in ¶ 2.02 of the proposed Amended Plan, with those specific dollar amounts stated as:

sell of real property within 12 months.

Id. No other payment amounts are stated, but merely that some real property will be sold within 12 months of some start date.

3. The term of the Plan is to be sixty months.

Amended Plan ¶ 2.03

4. For the Class 1 secured claim of Wells Fargo Bank, N.A., it is stated to have an arrearage of ($18,352.20), and the treatment of this Class 1 secured claim is as provided for in the Additional Provisions. Plan ¶ 3.07.

a. The proposed Amended Plan treatment for the Class 1 Claim is stated as:

> CLASS 1 CLAIM SHALL RECEIVE AN ADEQUATE PROTECTION PAYMENT OF $1,020.00 PER MONTH FOR THE ONGOING PAYMENT
>
> DEBTOR HAVING OBTAINED PERMISSION TO MARKET THE SUBJECT PROPERTY AND INTENDS TO SELL THE SUBJECT PROPERTY WITHIN 7 MONTHS OF THE FILING OF THIS AMENDED CHAPTER 13 PLAN.

Amended Plan, Additional Provisions, p. 7.

Though written in capital letters, the terms do not state what property is to be sold or what is the "subject property." Additionally, as with the prior plan not proposed in good faith, this merely says that Debtor "intends" to sell the property within seven months of filing the Amended Plan. While "intending" to so do, nothing requires the Debtor as Plan Administrator to actually sell the property. It appears that this is carefully drafted "weasel word language" to allow the Debtor to not sell the property, but say, "hey, the judge says I only have to intend to do it – you creditors are locked into me having my intended sixty months."

5. For Class 2 secured claims, Debtor clearly states what her monthly payments will be for the two claims secured by her Lincoln Navigator and her Ford Fusion.

a. There is also the State of California Labor Commission listed as having a ($28,566.02) secured claim, to be paid as provided in the Additional Provisions. For the State of California, the following treatment is provided in the Additional Provisions:

> Class 2 Claim of State Labor Commission to be paid in full from sale of real property on or before the 12th month

Amended Plan, Additional Provisions, p. 7.

This treatment for the State of California, while not in all capital letter, suffers from the same

"ambiguities," including not identify what real property will be sold and before the twelfth month from when. [FN.1]

FN. 1. Debtor may want to argue, "really judge," even you can connect the dots and say that you assume/think/divine that it could be construed to mean sale of the Dover Avenue property and it will be twelve months from the filing of this case, or maybe twelve months from the filing of the Amended Plan, or maybe twelve months from confirmation, or maybe twelve months from the effective date. First, it is not for the court to divine what the terms of the plan may possibly be. Secondly, in light of the express findings of the court with respect to the lack of good faith, if Debtor were prosecuting this Amended Plan in good faith, the plan terms were to be to the "See Spot, See Spot Run" level of plainly written terms.

---

6. For Class 3 surrender, Debtor states that she is surrendering the Chanslor Avenue Property and a third vehicle, a 2013 Ford.

7. There are no Class 4 claims provided for.

8. For Priority Claims, there are $14,266.97 to be paid over the 60 months of the Plan (which averages $237.79 a month).

9. There is a 0.00% dividend for creditors holding Class 7 general unsecured claims, with such claims stated to be approximately $56,969.02.

Review of Debtor's Testimony Under Penalty of Perjury

Debtor has provided her Declaration in support of the present Motion. Declaration, Dckt. 83. Debtor testifies that she is only able to make monthly plan payments of $1,700.00. Declaration ¶ 2; *Id.*

Debtor also testifies that the property has a list price of $820,000. *Id.*

Debtor then states to the court that she will make the $1,700 a month payments until the court approves the sale of the Dover Avenue Property. This is to pay all claims secured by that property. Debtor "estimates" that the sale will occur in the next six months (the Declaration signed February 11, 2020). Declaration ¶ 3, *Id.*

On Amended Schedule A/B, Debtor states that the Dover Avenue Property has a fair market value of $740,000, which is ten percent (10%) less than the stated listing price. Amended Schedule A/B, Dckt. 88 at 4. On Amended Schedule D, Debtor lists Wells Fargo Bank, N.A. having a claim of ($390,042) and the State of California having a claim of ($28,544) secured by the Dover Avenue Property. Dckt. 18 at 5, 7.

Schedule I filed in this case (there being no supplemental or amended Schedule I filed) states that Debtor's monthly gross income is $3,124, which consists of Social Security and retirement income. Dckt. 1 at 30-31. On Schedule J Debtor lists having monthly expenses of ($1,424), which does not include mortgage/rent/property taxes/insurance. *Id.* at 32-33. This yields the $1,700 in monthly net

income that Debtor will use to fund the Plan.

Debtor's expenses are very modest. One expense not shown is what state and federal income taxes Debtor pays for her $39,000 a year in Social Security and retirement income.

Treatment of Ex-Spouse's Claim(s)

Charles Evans, Debtor's ex-spouse, has filed Amended Proof of Claim No. 12-2 (filed November 26, 2019) asserting an unsecured claim in the amount of ($532,891.44). No priority amounts are asserted for Claim No. 12-2. The elements of this claim are:

A. Debtor is required under the Marital Settlement Agreement to Quitclaim the Chanslor Property to Mr. Evans. The proposed Amended Plan provides for the surrender of this property to the creditor having a secured claim. However, as the court discussed in the prior rulings, merely because the Debtor and her ex-spouse agree to transfer property between them, that doesn't mean they can do so to keep assets from being used to pay creditor claims. Marital settlement agreement transfers are subject to the federal and state fraudulent conveyance laws.

While Mr. Evans claims the right to the Chanslor Property as his sole and separate property pursuant to the Marital Settlement Agreement, the Debtor has not addressed for the court whether "giving" him this community property is not a transfer that the fiduciary of the bankruptcy estate should avoid.

B. Debtor is required to pay half the proceeds from the sale of the Dover Avenue property to Mr. Evans pursuant to the terms of the Marital Settlement Agreement. Again, it is not shown if elevating Mr. Evans to a creditor status for the proceeds from the sale of the Dover Avenue property results in a violation of the fraudulent conveyance laws.

C. Mr. Evans states that he has a claim to be held harmless for the obligation owed on the Debtor's Lincoln Navigator.

D. Mr. Evans' claim makes reference to "CJ's BBQ and Fish." Debtor is to sign documents to transfer CJ's BBQ and Fish Sonoma Boulevard and MacDonald Avenue Store to Mr. Evans as his sole and separate property. Against, it has not been shown if transferring these assets to Mr. Evans violates the fraudulent conveyance laws.

E. Mr. Evans claims an interest in one-half of all of the Debtor's AT&T 401(k) plan.

F. Debtor is to transfer burial plot to Debtor's grandson. Again, it is not shown whether such a transfer violates the fraudulent conveyance laws.

G. Mr. Evans asserts that a 2011 loan with Bank of the West is to "be confirmed to Debtor" as her sold and separate debt, from which Mr. Evans is to be held harmless.

H. Debtor is to pay one-half of the State Labor Commission debt.

I. Debtor is to pay one-half of any tax deficiencies for any tax years prior to separation.

Attached to Proof of Claim No. 12-2 is a copy of the Marital Settlement Agreement. It is signed on December 15, 2018 by Mr. Evans and the Debtor. Information about assets and obligations of the Debtor and Mr. Evans in the Marital Settlement Agreement include:

1. The parties were married on July 29, 1989 and separated on November 19, 2014, after 25+ years of marriage.

2. The Debtor runs one and Mr. Evans run two CJ's BBQ and Fish locations.

3. Schedules A and B list the community property of the Debtor and Mr. Evans. This community property includes:

   a. Vehicles

      (1) 2011 Lincoln Navigator

      (2) 1965 Ford Falcon

      (3) 1980 Jaguar

      (4) 2014 Ford Custom Van

   b. Jewelry

   c. Baseball cards and memorabilia

   d. Household goods/furnishings, including:

      (1) Three gold-leaf tables in formal dining room

   e. Real Property

      (1) Dover Property

      (2) Chanslor Avenue Property

   f. CJ's BBQ and Fish Stores

      (1) Parker Road Store

      (2) Sonoma Boulevard Store

      (3) MacDonald Avenue Store

g. AT&T Pension Plan and 401(k)

Charles Evans Bankruptcy Case

Charles Evans commenced his voluntary Chapter 13 bankruptcy case on November 11, 2015 and was granted a discharge on October 7, 2019. Bankr. E.D. Cal. 15-28729. The Plan in Mr. Evan's case requirement monthly plan payments of $4,700 for a period of 49 months. This included a 100% dividend for creditors holding general unsecured claims. Mr. Evan's bankruptcy case was filed one month before the marital settlement agreement was signed.

On March 16, 2019, the bankruptcy court in Mr. Evan's case entered an order approving the Marital Settlement Agreement. This was six months before Debtor commenced her current Chapter 13 case.

A review of the Schedules filed by Mr. Evan's in his Chapter 13 cases discloses the following properties and interests on Schedules A and B includes:

A. Real Property

1. Dover Avenue.....$640,000 FMV

a. Community Property

2. Chanslor Ave.....$486,900 FMV

a. ½ Fee Simple with Spouse

B. Personal Property

1. 50% Interest in Unidentified "LLC".....$50,000

2. Vehicles

a. 2014 Ford Van Conversion.....$55,000

b. 1980 Lincoln Continental.....$ 6,000

c. 1965 Ford Falcon.....$ 4,000

15-28729; Dckt. 1.

On Schedule I Mr. Evans stated that his occupation was that as a chef being employed by CJ's BBQ and Fish, LLC. *Id.* at 23. In addition to his employment income, Mr. Evans stated having $3,452 a month in net income from other businesses or rentals.

Then on March 10, 2019, Mr. Evans filed an Amended (not Supplemental) Schedule A/B identifying various properties and interests, including:

A. Real Property

1. Dover Avenue.....$640,000 FMV

a. Owned only by Mr. Evans, not checking the box that this was community property, but does state "community property interest with estranged spouse."

2. Chanslor Avenue.....$486,900 FMV

a. Owned only by Mr. Evans, but then states ½ simple fee interest with estranged spouse.

3. Vehicles

a. 2014 Ford Van Conversion.....$55,000 FMV

(1) Debtor stated to be the only owner, not marked as community property.

b. 1980 Lincoln Continental.....$6,000 FMV

(1) Debtor as only owner, marked as community property.

c. 1965 Ford Falcon.....$4,000 FMV

(1) Debtor stated to be the only owner, marked as community property.

d. 1980 Jaguar.....$1,000 FMV

(1) Debtor stated to be the only owner, marked as community property.

e. 2011 Lincoln Navigator.....$5,000 FMV

(1) Debtor stated to be the only owner, marked as community property.

4. 50% Interest in unidentified LLC.....$90,000 FMV

Dckt. 60.

Denial of Motion to Confirm

It appears that Debtor and her ex-spouse have themselves in a more complex bankruptcy relationship than they hoped. Debtor continues to delay in getting the Dover Property marketed and sold. Debtor continues to state an intention to maybe act and sell, within some period of time, as

opposed to the forced liquidation caused by the dissolution. The Order on the Dissolution and for the division of community assets was signed on August 14, 2019 by the State Court judge. A copy is attached to Amended Proof of Claim 12-2, p. 12. This was one month before Debtor commenced this bankruptcy case. Now, with the COVID-19 travel and business restricts, the inability to act may well cause a protracted sale process.

Debtor and her ex-spouse seek to now split up their community assets, giving some to the ex-spouse while leaving Debtor's creditors holding general unsecured claims unpaid. This raises serious fiduciary duty obligations for the Debtor, and may necessitate the appointment of a Chapter 7 trustee - something the court is sure that neither the Debtor nor her ex-spouse would desire.

The time for filing "maybe plans" and the "War of the Roses" battle from state court bleeding into this court is at an end. Debtor and her ex-spouse need to find a way for their lawyers and financial advisers to structure a plan, get creditors (other than the ex-spouse) paid, get the ex-spouse what he is to receive from the Martial Settlement Agreement, and the Debtor on her way to a debt free future.

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, Jerline Linda Wallace ("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.	**19-27862-E-13 DPC-1**	**SHAVINA/DONALD THOMAS Richard Jare**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 3-17-20 [61]**

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, on March 17, 2020. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan ~~is sustained~~.

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

A. Shavina Denise Thomas and Donald Wayne Thomas ("Debtor") are delinquent in plan payments.

B. Plan's Additional Provisions alter priority claims treatment without agreement or consent from creditors.

C. Failure to identify 2019 tax refunds on Schedule B.

D. Schedule I may not accurately reflect Debtor's actual income.

DISCUSSION

Trustee's objections are well-taken.

Delinquency

Debtor is $600.00 delinquent in plan payments, which represents multiple months of the $300.00 plan payment. Before the hearing, another plan payment will be due. According to Trustee, the Plan in § 2.01 calls for payments to be received by Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Counsel addresses this delinquency in his Declaration filed in support of the Motion. Dckt. 67. Counsel testifies under penalty of perjury that he has personal knowledge that Debtor made a payment of $600.00 on March 12, 2020. *Id.* at 1. Counsel testifies that he obtained printouts of the TFS Trustee Payment System website which he filed as Exhibit (Dckt. 68). *Id.* at 3. He further testifies that proof of payment was shown to the Trustee at the March 12 Meeting of Creditors. *Id.* at 5.

Priority Claims Not Paid in Full

A debtor's Plan must provide for all priority debt, unless the creditor agrees to other treatment. 11 U.S.C. § 1322(a)(2). According to Debtor's Additional Provisions under Section 7.03: "The Plan shall complete regardless of whether or not these § 507(a)(1)(B) obligations are paid in full. As Debtor's plan is a PRO TANTO with respect to class 5 claim, the plan shall complete at the stated term, whether or not this Priority obligation is paid in full." This provision amends §3.12.

Debtor argues that under §1322(a)(4), pro tanto treatment of the AFDC claim is allowed without the consent of the creditor. That section provides for claim entitled to priority under section 507(a)(1)(B). Further arguing that this is a distinct term of that of subsection (a)(2) which defines that consent is required if this was a priority IRS debt. Debtor adds that this class of creditor normally boycotts most chapter 13 proceedings.

In looking at Debtor's response, it states that this is a "preliminary response" in light of this being an Objection to Confirmation filed using the Local Bankruptcy Rule 9014-1(f)(2) procedure which allows opposition to be stated orally at the hearing and the court setting a briefing schedule as warranted.

Debtor's Opposition provides a **multi**-colored font response and citation to the Cornell University website.

The Trustee's Objection is based in part on the Plan not providing to pay claims in full. Just as many parties and their attorneys believe that one need only utter the magical incantation of "11 U.S.C. § 105(a) and the judge can make up the law," Debtor throws the words "PRO TANTO" (all capital letters in original) at the court. Debtor does not provide the court with a definition of this term or why it is relevant to the discussion. [FN. 1.]

FN. 1. The court notes that Debtor's counsel advises the court that the law library is closed and his law firm does not subscribe to any online legal research services. It is strange that in the 21st Century a attorney would not have either a LEXIS or Westlaw subscription as part of the standard legal office setup.

Using the Ballentine's Law Dictionary, obtained through LEXIS, the following definition of pro tanto is provided:

> pro tanto
>
> For so much; for as far as it goes; to such an extent.

So, in using this term, the court understands the Debtor's position is that "the priority claims get what they get, and they can't throw a fit."

The Trustee's monochromatic Objection points the court to 11 U.S.C. § 1322(a)(2), asserting that priority claims must be paid in full through the plans, unless the creditor agrees otherwise. The section of the Bankruptcy Code cited by the Trustee states:

> § 1322. Contents of plan
>
> (a) The plan—
>
> > (1) shall provide for the submission of all or such portion of future earnings or other future income of the debtor to the supervision and control of the trustee as is necessary for the execution of the plan;
> >
> > (2) shall provide for the full payment, in deferred cash payments, of all claims entitled to priority under section 507 of this title, unless the holder of a particular claim agrees to a different treatment of such claim;

11 U.S.C. § 1322(a), the four requirements of which are stated in the conjunction "and," rather than a disjunctive "or" allowing the plan to provide one or the other.

In reviewing the claims register in this case, no priority claim has been filed - either by the creditor or the Debtor. In the Plan, Debtor lists a priority claim of $100.00. Plain, ¶ 3.12; Dckt. 12. This amount has been stated subject to the certifications as provided in Federal Rule of Bankruptcy Procedure 9011.

The Trustee's objection does not direct the court to a specific priority claim, but to the PRO TANTO language Debtor has added to the additional provisions for what is a "nickel and dime" claim stated in the Plan.

Going to Debtor's Schedule E/F, a creditor identified as DCSS, CA with a priority claim of $100.00 is listed. Dckt. 22 at 13. This is stated to be a community debt for Domestic Support Obligations. Debtor adds the following typed at the bottom of the page:

> His Child Welfare Reimbursement Arrears, guesstimate

Id. Debtor's Schedules are filed under penalty of perjury and are statements of factual information - not guesses. If Debtor is obligated to pay California Child Support Services for unpaid child support obligations which Debtor did not pay and the State made public support payments, he should have attached demand and payment letters, statements, and his records of payment - not guesses.

Assuming that there is a priority obligation, the obligation identified is one that can be paid in full in the first month.

If not and the actual amount is greater than the $100 stated by Debtor under penalty of perjury on the Schedules, the Debtor directs the court to paragraph (4) of 11 U.S.C. § 1322(a) which states:

> (a) The plan—
> . . .
> (4) notwithstanding any other provision of this section, may provide for less than full payment of all amounts owed for a claim entitled to priority under section 507(a)(1)(B) only if the plan provides that all of the debtor's projected disposable income for a 5-year period beginning on the date that the first payment is due under the plan will be applied to make payments under the plan.

Thus, 11 U.S.C. § 1322(a)(3) which states that priority claims must be paid in full, for one type of priority claim less than the full amount is required to be paid if the debtor provides for paying all of the debtor's disposable income into the plan for five years. That one type of priority claim is:

> (a) The following expenses and claims have priority in the following order:
>
> (1) First:
>
> (A) Allowed unsecured claims for domestic support obligations that, as of the date of the filing of the petition in a case under this title, are owed to or recoverable by a spouse, former spouse, or child of the debtor, or such child's parent, legal guardian, or responsible relative, without regard to whether the claim is filed by such person or is filed by a governmental unit on behalf of such person, on the condition that funds received under this paragraph by a governmental unit under this title after the date of the filing of the petition shall be applied and distributed in accordance with applicable nonbankruptcy law.
>
> (B) Subject to claims under subparagraph (A), **allowed unsecured claims for domestic support obligations** that, as of the date of the filing of the petition, **are assigned** by a spouse, former spouse, child of the debtor, or such child's parent, legal guardian, or responsible relative **to a governmental unit** (unless such obligation is assigned voluntarily by the spouse, former spouse, child, parent, legal guardian, or responsible relative of the child for the purpose of collecting the debt) **or are owed directly to or recoverable by a governmental unit under applicable nonbankruptcy law**, on the condition that funds received under this paragraph by a governmental unit under this title after the date of the filing of the petition be applied and distributed in accordance with applicable nonbankruptcy law.

11 U.S.C. § 507(a)(1)(A), (B).

Thus, there is not a requirement, as a matter of federal law, that if the domestic support obligation was not voluntarily assigned to or owed by operation of nonbankruptcy law to a governmental unit, then the plan does not require them to be paid in full.

The 11 U.S.C. § 507(a)(1)(B) is a priority claim, just second in priority to the first priority domestic support claims. The discussion on this provision in Collier on Bankruptcy is broad, stating:

> [5] Special Provision for Domestic Support Obligations Owed to Governmental Units; § 1322(a)(4)
>
> Section 1322(a)(4) recognizes the fact that some debtors have very large support obligations owed to governmental units, and that requiring those obligations to be paid in full in a chapter 13 plan would make chapter 13 impossible for such debtors. This in turn could leave those debtors saddled with debt, and perhaps subject to foreclosure or repossessions, all of which would greatly undercut their ability to support their dependents, defeating the purpose of other provisions that were intended to increase support payments.
>
> To alleviate this problem, section 1322(a)(4) excuses the debtor from making full payment of domestic support obligations entitled to priority under section 507(a)(1)(B) if the plan provides that all of the debtor's disposable income for five years, the maximum plan period, is devoted to plan payments. This provision enables a chapter 13 debtor to cure a mortgage default, save a family vehicle, or otherwise use chapter 13 even if the debtor cannot pay the domestic support obligations owed to a governmental unit in full. Of course, those obligations remain nondischargeable, so the debtor would continue to be obligated to pay them after the case is concluded.

8 Collier on Bankruptcy, Sixteenth Edition, ¶ 1322.03.

Thus, 11 U.S.C. § 1322(a)(4) allows a plan to provide for those assigned domestic support obligations to be paid partially, with the Debtor having to pay after the case since they are nondischargeable. But the plan must make provision for them.

Additionally, the provisions of 11 U.S.C. § 1322(a)(4) are applicable as a matter of law, not a "Plan Created Modification." Here, the additional provisions do not provide for payment of $X a month for the 11 U.S.C. § 507(a)(1)(B) priority claims, but that the plan does not state how they will be necessarily treated. Then the Debtor adds that even if not paid in full, "the plan shall complete at the stated term." Whether the Plan is completed or not is as provided in the Bankruptcy Code, not as created by Debtor in the Plan. Then, the Plan purports to determine a creditor's claim based upon the creditor using the word "assigned," "welfare," or "AFDC."

Review of Schedules, Plan, and Prior Cases

Between the two debtors, this is their third case since September 2018. The debtors each filed a prior separate case, and now this joint case.

On Schedule I in the current case, Debtor states having gross income of $3,338 a month. Dckt 22 at 26-27. Debtor speculates having an additional $700 in future roommate income and using a tax refund of $350 a month to cover expenses. On Schedule A/B Debtor anticipates $1,900 in 2019 tax refunds. *Id.* at 6. This would provide five months of such coverage.

Once the tax refund comes in, that would give Debtor $3,688 a month. However, on Schedule J Debtor lists having expenses of ($4,088). It is not explained how Debtor, even with the tax refund, is able to make up the difference.

A Chapter 13 Plan is necessary for Debtor due to the loans secured by the Debtor's vehicles, which amounts are well in excess of said vehicles. The court has issued two orders valuing the two secured claims. Orders, Dckts. 58, 59.

Feasibility

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). According to Trustee, Debtor admitted at the Meeting of Creditors that they have not yet filed the return for 2019 but that they expect a refund. Such refund is not identified on Schedule B. Moreover, at the Meeting Debtor admitted that roommate income listed on Schedule I is being replaced by a new job. Debtor has failed to file Schedules correcting any of this information. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

In their Response, Debtor asserts that Schedule B and C already exempt the 2019 tax refunds. A review of Debtor's Schedule C, filed on January 17, 2020, shows that Debtor has exempted Federal 2019 pro rata for 1040 in the amount of $1,600.88 and State 2019 pro rata form 1040 in the amount of $300.88 under C.C.P. § 703.1240(b)(5). Dckt. 22. No Objection to Claimed Exemptions has been filed by Trustee as of April 4, 2020.

At this juncture, Debtor has not provided the court with financial information to show that the plan can be performed. Additionally, Debtor needs to delete the additional provision purporting to create a PRO TANTO distribution and completion of plan, and create a provision for the 11 U.S.C. § 507(a)(1)(B) priority claims will be paid through the plan whatever monies remain after payment of the administrative expenses and secured claims.

At the hearing, **xxxxxxxxxx**

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

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

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

8. **18-23464-E-13** **CYNTHIA PAYSINGER** **MOTION TO MODIFY PLAN**
PGM-6 **Peter Macaluso** **2-28-20 [143]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on February 28, 2020. By the court's calculation, 39 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is granted.

The debtor, Cynthia J. Paysinger ("Debtor") seeks confirmation of the Modified Plan because she encountered several changes/problems which included one of her clients having an emergency and was in the hospital for six weeks, client is getting chemotherapy but is now back with Debtor and now Debtor is able to make payments as required. Declaration, Dckt. 145. The Modified Plan provides payments of $3,000.00 for 40 months commencing on March 25, 2020, and a 0.00% percent dividend to unsecured claims totaling $1,556.07. Modified Plan, Dckt. 147. 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 24, 2020. Dckt. 154. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor's modified Plan proposes to increase post-petition arrears where an additional post-petition payment is not due.

B. The additional provisions propose terms the Trustee is unable to administer.

DISCUSSION

Post-Petition Arrears

The proposed Plan increases post-petition arrearage amounts from $7,782.83 (5 months) to $9,376.59 (6 months) even though an additional payment is not due. Trustee states that he would have no objection if Debtor is attempting to pay the mortgage ahead by one month so that Debtor would not have to make the final plan payment followed by a mortgage payment a few days later.

In her Response, filed on March 31, 2020, Debtor confirms that it is her intention to make one payment ahead so to not have to remit her payment to the Chapter 13 Trustee on the 60th month then make her next mortgage payments directly only a few days later.

Additional Provisions

Debtor's language in the additional provisions indicates the balance on hand as of February 26, 2020 was $3,269.50, and proposes the Trustee disburse from those funds one (1) mortgage payment to Wells Fargo ($1,593.74) and $350.00 toward administrative claims. However, as of February 28, 2020, the Trustee disbursed $3,187.48 in ongoing mortgage payments and $82.02 in attorney's fees.

Debtor's Response and Amendment

In her Response, Debtor agrees with the Trustee's analysis of the additional provisions regarding disbursement of the funds on hand.

Debtor requests that the following language be stricken from the plan in the Order: "Balance on hand as of February 28, 2020 = $3,269.50 Trustee is to disburse funds on hand as follows: One on-going payment Class 1 Wells Fargo = $1,593.74 Administrative claim pursuant to §3.06 = $350.00 ($50 x 7)" Dckt. 70.

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, Cynthia J. Paysinger ("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 28, 2020, as amended to delete the "Balance on hand as of February 28, 2020 = $3,269.50 Trustee is to disburse funds on hand as follows: One on-going payment Class 1 Wells Fargo = $1,593.74 Administrative claim pursuant to §3.06 = $350.00 ($50 x 7)" in the proposed plan, 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.

9.	**20-20474-E-13** **DPC-1**	**CHRISTOPHER MODELLAS** **Peter Macaluso**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **3-11-20 [22]**

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, on March 11, 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 Objection to Confirmation of Plan is overruled.

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

A. Debtor failed to provide a copy of his tax returns.

B. The Plan is not best effort.

DISCUSSION

Trustee's objections are well-taken.

Failure to Provide Tax Returns

Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A)(i); FED. R. BANKR. P. 4002(b)(3). Debtor has failed to provide the tax transcript. That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

In his Response, filed on March 31, 2020, Debtor states that the tax returns were provided to Trustee via email on March 25, 2020. Dckt. 26.

Not Best Effort

Trustee alleges that the proposed Chapter 13 Plan violates 11 U.S.C. § 1325(b)(1), which provides:

> If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or the plan provides that all of the debtor's projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan.

Trustee alleges that at the Meeting of Creditors Debtor admitted that he received approximately $6,000.00 in refunds for tax year 2019. Yet, Debtor's Plan proposes plan payments of $2,450.00 per month for 60 months, with a 0% dividend to creditors with unsecured claims. If Debtor were to include the $6,000.00 tax return in his monthly income calculation, dividing the income monthly throughout the year, Debtor would have at least an additional $500.00 per month in income.

Trustee argues that Debtor's income should be adjusted to either reflect the tax refund income or lower the tax expense which would result in additional income that could be paid into the plan.

Debtor's Response

In his Response, Debtor states that Debtor is over the median income but completes with a monthly disposable income of ($486.63). Thus, the proposed plan is 60 months with a 0% dividend to creditors with unsecured claims.

Debtor believes that tax refunds should total approximately $6,000.00 per year. Debtor is not opposed to remitting to Trustee tax all annual tax refunds in excess of $2,000.00 per year, due within 30 days of receiving the refund.

Overruling Objection

The Debtor has addressed the tax issue with the Trustee, with all annual tax refund amounts in excess of $2,000 (state and federal tax refund amounts combined) paid into the plan.

Though the Trustee did not raise it, Debtor argues that he has a negative projected disposable

monthly income. Response, Dckt. 26. If so, then Debtor cannot perform the Plan which requires monthly plan payments of a positive $2,450 a month. Plan ¶ 2.01; Dckt. 3. If Debtor's Schedules I and J which are stated under penalty of perjury are accurate, Debtor has $2,450.57 in monthly net income going forward, which appears to be a positive projected monthly disposable income amount. The Trustee not having raised it and it being inconsistent with the information on Schedules I and J under penalty of perjury, the court looks past Debtor's statement that he has negative projected disposable income.

The Plan, as amended, complies with 11 U.S.C. §§ 1322 and 1325(a). The Objection is overruled, and the Plan is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is overruled, and Christopher Michael Modellas ("Debtor") Chapter 13 Plan filed on January 29, 2020, as amended to provide that annual income tax refund amounts in excess of $2,000 (for combined federal and state refunds) be paid into the plan is confirmed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

10. **20-20393-E-13 DPC-1** **MICHAEL/KIMBERLY OOSTERMAN** **Mikalah Liviakis** **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK** **3-9-20 [17]**

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

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 9, 2020. By the court's calculation, 29 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. Debtor failed to appear at the Meeting of Creditors.

B. Plan is not Debtor's best effort.

C. Debtor failed to provide business documents.

D. The proposed Plan fails the liquidation analysis.

E. There is a discrepancy in household size between Schedule J and Form 122C-1.

DISCUSSION

Trustee's objections are well-taken.

Failure to Appear at 341 Meeting

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

Not Best Effort

Trustee alleges that the proposed Chapter 13 Plan violates 11 U.S.C. § 1325(b)(1), which provides:

> If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or the plan provides that all of the debtor's projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan.

Trustee argues that Schedule I may not portray Debtor's actual income. Schedule I states Debtor as having a home-based business and lists an income of $150.00 but failed to attach the statements as required by the Schedule.

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.

Debtor Fails Liquidation Analysis

Debtor's plan fails the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). Trustee

states that Debtors propose to pay 0% to creditors with unsecured claims when the proposed plan calculates that the dividend would be approximately 17%. This is based on non-exempt equity in the house of $27,457 and $380 in bank accounts. Trustee further asserts that the Plan still fails the liquidation analysis unless Debtors increase the dividend to no less than 6% or submit a sales analysis for the real property in Elk Grove, California.

Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). There is a discrepancy between Schedule J and Form 122C-1. Schedule J lists four (4) dependents living with Debtors. However, Form 122C-1 list five (5) as number of people in the household. Thus, the number of people in the household is uncertain. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

The Plan does not comply with 11 U.S.C. §§ 1322 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.

11. 20-20486-E-13 DPC-1 10 thru 12

CHARLIE BALANGUE
Scott Hughes

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK
3-9-20 [32]

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 9, 2020. By the court's calculation, 29 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

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

B. There are issues with Debtor's claimed exemptions.

DISCUSSION

Trustee's objections are well-taken.

Ability to Pay

Debtor may not be able to make plan payments called for under the Plan, pursuant to 11 U.S.C. § 1325(b), which provides in part:

If the trustee or the holder of an allowed unsecured claim objects to the confirmation

> of the plan, then the court may not approve the plan unless, as of the effective date of the plan the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or the plan provides that all of the debtor's projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan.

Debtor's Plan does not propose to cure the mortgage arrears of $55,000.00 or surrender the real property.

Instead, under the Additional Provisions, Debtor proposes to pay the regular mortgage payments for a year or until the residence is sold, with the arrears being paid through the sale of the property. The Plan further proposes that Debtor has one year to sell the property or, if not able, Creditor U.S. Bank will have relief from the stay so that Creditor can foreclose.

No actual details are provided for the sale. Debtor has not filed a motion to employ a broker or a motion to sell the property.

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

Exemption Issues

Trustee notes that there are issues with Debtor's claimed exemptions. Though Debtor claims exemptions under California Code of Civil Procedure § 703.140(b), Debtor has failed to file the required spousal waiver for Debtor's non-filing spouse. Further, Debtor claimed wrong exemption codes by claiming under both § 703.140 and § 704.010.

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.

12. 20-20486-E-13 DPC-1 CHARLIE BALANGUE Scott Hughes OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS 3-9-20 [36]

Final Ruling: No appearance at the April 7, 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 and Debtor's Attorney, on March 9, 2020. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

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

The Chapter 13 Trustee, David Cusick ("Trustee") objects to Charlie Marzan Balangue's ("Debtor") exemptions on the basis that:

(1) under California Code of Civil Procedure § 703.140(b), Debtor is required to file a Spousal Waiver, and

(2) that contrary to C.C.P. § 703.140(a), Debtor cannot claim exemptions under both C.C.P. § 703.140(b) and C.C.P. § 704.010.

DISCUSSION

A claimed exemption is presumptively valid. *In re Carter,* 182 F.3d 1027, 1029 at fn.3 (9th Cir.1999); *See also* 11 U.S.C. § 522(l). Once an exemption has been claimed, "the objecting party has the burden of proving that the exemptions are not properly claimed." FED. R. BANKR. P. RULE 4003(c); *In re Davis*, 323 B.R. 732, 736 (9th Cir. B.A.P. 2005). If the objecting party produces evidence to rebut the presumptively valid exemption, the burden of production then shifts to the debtor to produce unequivocal evidence to demonstrate the exemption is proper. *In re Elliott*, 523 B.R. 188, 192 (9th Cir. B.A.P. 2014). The burden of persuasion, however, always remains with the objecting party. *Id*.

First, Trustee objects to Debtor's Exemption under § 703.140 without the filing of the spousal waiver as required by California Code of Civil Procedure § 703.140. California Code of Civil Procedure § 703.140(a)(2), provides:

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

(emphasis added). The court's review of the docket reveals that the spousal wavier has not been filed.

A review of Debtor's Schedule C shows Debtor's claimed exemptions under both C.C.P. § 703.140(b) and C.C.P. § 704.010. Dckt. 1 at 17. As the Code provides above, Debtor cannot claim both.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claimed Exemptions filed by The Chapter 13 Trustee, David Cusick ("Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection is sustained, and the claimed exemptions for Debtor's residence, 1999 Infinity QX4 and 2005 Nissan Altima under California Code of Civil Procedure §§ 703.140(b), and the claimed exemption for Debtor's 1995 Honda under California Code of Civil Procedure §§704.010 are disallowed in their entirety.

13. **20-20486-E-13 DVW-1** | **CHARLIE BALANGUE** **Scott Hughes** | **OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK NATIONAL ASSOCIATION** **2-17-20 [23]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on February 17, 2020. By the court's calculation, 50 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.

U.S. Bank National Association ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

A. Debtor will not be able to make all plan payments.

B. Neither the Plan nor the case were filed in good faith.

C. Plan seeks to modify obligation secured by Debtor's principal residence.

D. Creditor's claim is not being cured within a reasonable time.

DISCUSSION

Creditor's objections are well-taken.

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 argues that Debtor's Plan is not feasible because the Plan fails to provide for Creditor's claim except for the proposed sale within one year. Indeed, Creditor calls this sale "speculative and illusory."

The court is inclined to agree with Creditor. Debtor has failed to file a motion to employ a broker or a motion to sell property. Debtor gives himself a year to sell the property without giving this court an explanation for such unreasonable delay.

Without an accurate picture of Debtor's efforts to sell the property, the court cannot determine whether the Plan is confirmable.

Failure to Cure Arrearage of Creditor

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts $60,894.21 in pre-petition arrearage. The Plan does not propose to cure those arrearage. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearage.

Modification of an Obligation Secured Only by Principal Residence

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. Creditor has filed a Proof of Claim indicating a secured claim in the amount of $315,365.19, secured by a first deed of trust against the property commonly known as 9008 Allbritton Way, Elk Grove, California. Debtor's Schedules indicate that this is Debtor's primary residence. This modification violates 11 U.S.C. § 1322(b)(2), which prohibits the modification of an obligation secured only by Debtor's residence.

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 U.S. Bank National Association ("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.

14.	**19-21278-E-13** **WW-1**	**ALBERT GIL** **Mark Wolff**	**CONTINUED MOTION TO MODIFY PLAN** **1-15-20 [22]**

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 January 15, 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 Motion to Confirm the Modified Plan is granted.

The debtor, Albert Arellano Gil ("Debtor") seeks confirmation of the Modified Plan because Debtor's income has been reduced. Declaration, Dckt. 24. Additionally, Debtor expects approximately $1,000,000 from an inheritance. *Id.*

The Modified Plan provides payments of $930.00 for nine (9) months, then payments of $500.00 for eighteen (18) months, plus a lump sum payment of an amount to be less than $40,000.00 by June 25, 2021. Modified Plan, Dckt. 25. The lump sum payment shall be the amount necessary to complete the Plan with a payment of 100% to general unsecured creditors. *Id.* 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

In the Motion, Debtor states that he is to receive the monetary distribution after the sale of a parcel of property which is currently on the market. It is not disclosed whether this sale is being conducted through a court administered probate proceeding, a trust, or some other private distribution. It

appears that this inheritance is being generated in the Philippines.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on February 7, 2020. Dckt. 28. Trustee opposes on the basis that:

1. Debtor might not be able to make a lump sum payment on or before June 25, 2021.

2. Debtor has not had his family file any declarations stating they have been paying him $1,500.00 per month for his assistance with his father's estate.

DISCUSSION

Feasibility

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 requires him to make a lump sum payment in an amount less than $40,000.00 on or before June 25, 2021. Debtor has not provided the court with any specific information about the property, its sale, and the process by which he will receive the $1,000,000 inheritance.

The Court does not have: a description of the property, who is responsible for selling the property, and what the Debtor is doing to protect his rights in the proceeds from the sale of the property. The sole information provided to the court is the Debtor's Declaration stating the value of his share of the property should be in excess of a million dollars and that the property will be sold within half a year to a year.

The Debtor and Debtor's counsel are somewhat cryptic about the $1,000,000 inheritance. No pending probate proceeding is disclosed. No possible trust is disclosed. No information about the source of the $1,000,000 is provided. Rather, Debtor testifies that he is "informed" by some unknown person, in some unknown matter, that there is $1,000,000 that will drop into the Debtor's pocket.

Further, Debtor has not submitted additional evidence of the assistance provided by Debtor's family for his work on his father's estate to determine if this additional income can help facilitate Plan payments. Dckt. 24.

Decision

While there are some significant shortcomings with respect to the present Motion and evidence presented, the court concludes that the Motion should be granted. At the present time, the world is facing disrupted transportation and communication due to the coronavirus pandemic. While this does not excuse the shortcoming, it is mitigated by the Bankruptcy Code and U.S. Laws.

Debtor has affirmatively stated having a $1,000,000 asset in this case. Even if the right to this inheritance was acquired after the bankruptcy case was commenced, the interest in the property and the $1,000,000 are property of the bankruptcy estate. 11 U.S.C. § 1306(a)(1). The Debtor, as the debtor and the Plan Administrator, has fiduciary duties with respect to this property. This property, wherever located is property of the bankruptcy estate and subject to the jurisdiction of this court. 28 U.S.C.

§ 1334(e). With those duties go not only civil liabilities for breaches thereof, but criminal consequences if they are breached.

The Modified Chapter 13 Plan complies with 11 U.S.C. §§ 1322, 1325, 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 Chapter 13 Plan filed by 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 Motion is granted, Debtor's Modified Chapter 13 Plan filed on January 15, 2020, is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

15.	**19-23292-E-13 PLC-5**	**THOMAS PEARSON Peter Cianchetta**	**OBJECTION TO CLAIM OF CACH, LLC, CLAIM NUMBER 1 2-6-20 [91]**

15 thru 17

Appearance of Peter Cianchetta, Counsel for the Debtor is Required for the Hearing on this Objection

Telephonic Appearance Required

Tentative Ruling: The Motion Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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.

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 6, 2020. By the court's calculation, 61 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Objection to Proof of Claim Number 1-1 of CACH, LLC is sustained, and the claim is disallowed in its entirety.

Thomas Michael Pearson, Chapter 13 Debtor, ("Objector") requests that the court disallow the claim of CACH, LLC ("Creditor"), Proof of Claim No. 1-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $14,562.58.

Objector asserts that the Statute of Limitations on the collection of contract claims in California is four years from the date the balance was due under the contract or four years from the date the last payment was made under the contract. Objector states that according to the Proof of Claim, the charge off date and last transaction date was January 21, 2010. No Statement of Account Information was attached to the Proof of Claim.

DISCUSSION

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

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

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

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

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

Cal. C.C.P. § 337(d).

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

> Except as provided in section 524 of this title, if **applicable nonbankruptcy law**, an order entered in a nonbankruptcy proceeding, or an agreement **fixes a period for commencing or continuing a civil action** in a court other than a bankruptcy court **on a claim against the debtor**, or against an individual with respect to which such individual is protected under section 1201 or 1301 of this title, and such period has not expired before the date of the filing of the petition, then **such period does not expire until the later of**--
>
> > (1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or
> >
> > **(2) 30 days after notice of the termination or expiration of the stay under section 362, 922, 1201, or 1301 of this title, as the case may be, with respect to such claim.**

A review of Proof of Claim No. 1-1 lists the charge off date as April 2, 2010. The court takes judicial notice that a creditor does not "charge off" an account if payments are being made or further credit is being extended. (This basic fundamental point of credit transactions is commonly known by both creditors and consumers alike.)

No payment or other transaction occurred after January 21, 2010. Thus, the four-year statute of limitations expired no later than April 2, 2014, the court knowing based on the Proof of Claim that the obligation was in default as of the April 2, 2010 charge off date.

This bankruptcy case was filed on May 22, 2019 — five years after the statute of limitations expired. There was no period of time for 11 U.S.C. § 108 to preserve and extend for Creditor.

Authentication
and Perjury by Debtor

In his Declaration, Debtor makes the following theoretical assertion:

> 3. I further assert that the claim and the attachments, if any, appended to the claim do not sufficiently authenticate and substantiate the asserted balance and class of the underlying debt. Specifically, I object to the claim because Out of Statute.

Declaration ¶ 3, Dckt. 95.

In stating this, Debtor admits that he has not reviewed the claim, his being devoid of any information or personal knowledge of whether or not there are attachments to the Proof of Claim. Rather, it appears that Debtor affirmatively states that his counsel prepared, and he knowingly signed, a declaration for which he had no personal knowledge. Further, that Debtor has clearly demonstrated that he will sign, under penalty of perjury, whatever his attorney puts in front of him, so long as his attorney tells him, "say under penalty of perjury what you don't know, 'And You Can WIN!' "

Additionally, Debtor provides his expert, personally known, legal opinion that the claim is "Out of Statute." *Id.* Debtor also provides his expert, personally known, legal opinion that "the claim is time barred in accordance with California law."

Nothing in the Declaration provides any basis for Debtor having such legal expertise personal knowledge. A review of the California State Bar website for attorneys licensed in California (including those suspended and disbarred) does not include an attorney with the name Thomas Pearson.

Even more concerning is that Debtor's counsel has knowingly prepared a declaration which includes false information. This appears to be carefully constructed to try and mislead the court. Such practices are not consistent with being admitted to practice in the Eastern District of California by the District Court.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of CACH, LLC ("Creditor") filed in this case by Thomas Michael Pearson, Chapter 13 Debtor ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Proof of Claim Number 1-1 of CACH, LLC is sustained, and the claim is disallowed in its entirety.

16. **19-23292-E-13 PLC-6** **THOMAS PEARSON** **Peter Cianchetta** **OBJECTION TO CLAIM OF AMERICAN EXPRESS NATIONAL BANK, CLAIM NUMBER 2** **2-6-20 [97]**

Tentative Ruling: The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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.

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 6, 2020. By the court's calculation, 61 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Objection to Proof of Claim Number 2-1 of American Express National Bank is overruled without prejudice.

Thomas Michael Pearson, Chapter 13 Debtor ("Objector") requests that the court disallow the claim of American Express National Bank ("Creditor"), Proof of Claim No. 2-1 ("Claim"), Official

Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $1,478.75.

Objector asserts that the Statute of Limitations on the collection of contract claims in California is four years from the date the balance was due under the contract or four years from the date the last payment was made under the contract.

Objector states that according to the Proof of Claim, the charge off date and last transaction date was February 12, 2015. The date of last payment on the Statement of Account Information attached to the Proof of Claim states February 2015.

Review of Proof of Claim No. 2

Proof of Claim No. 2 states that this claim is based on a "credit card." Proof of Claim No. 2, ¶ 8. The Attachment to Proof of Claim No. 2 states that the last "transaction date" was April 2009. The court understands this to be the last "charge," extension of credit, obtained by the creditor's predecessor in interest. *Id.*, ¶ 7.

While the last transaction dates back more than a decade, the Attachment also states that the last payment was made by Debtor in February 2015, while the account was charged off in October 2009.

What this information tells the court is that notwithstanding the charge off and termination of credit being extended to Debtor, Debtor has been making payments under some form of repayment plan. The Attachment does not state what such repayment plan was, and when the Debtor defaulted on the repayment plan.

Review of Debtor's Testimony Under Penalty of Perjury

Debtor has provided testimony under penalty of perjury in support of this Objection in the form of a declaration. Declaration, Dckt. 99. In his Declaration, Debtor makes the following theoretical assertion:

> 3. I further assert that the claim and the attachments, if any, appended to the claim do not sufficiently authenticate and substantiate the asserted balance and class of the underlying debt. Specifically, I object to the claim because Out of Statute.

Declaration ¶ 3, Dckt. 99.

In stating this, Debtor admits that he has not reviewed the claim, his being devoid of any information or personal knowledge of whether or not there are attachments to the Proof of Claim. Rather, it appears that Debtor affirmatively states that his counsel prepared, and he knowingly signed, a declaration for which he had no personal knowledge. Further, that Debtor has clearly demonstrated that he will sign, under penalty of perjury, whatever his attorney puts in front of him, so long as his attorney tells him, "say under penalty of perjury what you don't know, 'And You Can WIN!' "

Additionally, Debtor provides his expert, personally known, legal opinion that the claim is "Out of Statute." *Id.* Debtor also provides his expert, personally known, legal opinion that "the claim is time barred in accordance with California law."

Conspicuously absent from the Declaration is any testimony about Debtor's payment plan, agreement, or when Debtor defaulted on such payment plan. This is all information that Debtor clearly has in his possession/knowledge and needs, in providing personal knowledge testimony in good faith, in support of this Objection.

Further, nothing in the Declaration provides any basis for Debtor having such legal expertise personal knowledge. A review of the California State Bar website for attorneys licensed in California (including those suspended and disbarred) does not include an attorney with the name Thomas Pearson.

Even more concerning is that Debtor's counsel has knowingly prepared a declaration which includes false information. This appears to be carefully constructed to try and mislead the court. Such practices are not consistent with being admitted to practice in the Eastern District of California by the District Court.

DISCUSSION

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

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

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

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

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

Cal. C.C.P. § 337(d).

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

> Except as provided in section 524 of this title, if **applicable nonbankruptcy law**, an order entered in a nonbankruptcy proceeding, or an agreement **fixes a period for commencing or continuing a civil action** in a court other than a bankruptcy court **on a claim against the debtor**, or against an individual with respect to which such individual is protected under section 1201 or 1301 of this title, and such period has not expired before the date of the filing of the petition, then **such period does not expire until the later of**--
>
> > (1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or
> >
> > **(2) 30 days after notice of the termination or expiration of the stay under section 362, 922, 1201, or 1301 of this title, as the case may be, with respect to such claim.**

A review of Proof of Claim No. 2-1 lists the charge off date as October 2009. The court takes judicial notice that a creditor does not "charge off" an account if payments are being made or further credit is being extended. (This basic fundamental point of credit transactions is commonly known by both creditors and consumers alike.)

The evidence relied upon by Debtor, the attachments to Proof of Claim No. 2, indicate that Debtor has or had a repayment plan for this obligation with the Creditor. Debtor making payments to creditor through February 2015, while the charge off occurred in 2009, indicates that the default occurred sometime after February 2015. Unfortunately, Debtor has chosen not to provide that necessary information to the court.

Based on the evidence before the court, the Objection is overruled without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of American Express National Bank ("Creditor") filed in this case by Thomas Michael Pearson, 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 2-1 of American Express National Bank is overruled without prejudice.

17. **19-23292-E-13 PLC-7** **THOMAS PEARSON** **Peter Cianchetta** **OBJECTION TO CLAIM OF AMERICAN EXPRESS NATIONAL BANK, CLAIM NUMBER 3** **2-6-20 [102]**

Tentative Ruling: The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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.

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 6, 2020. By the court's calculation, 61 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Objection to Proof of Claim Number 3-1 of American Express National Bank is overruled without prejudice.

Thomas Michael Pearson, Chapter 13 Debtor ("Objector") requests that the court disallow the claim of American Express National Bank ("Creditor"), Proof of Claim No. 3-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $1,579.74. Objector asserts that the Statute of Limitations on the collection of contract claims in California is four

years from the date the balance was due under the contract or four years from the date the last payment was made under the contract.

Objector states that according to the Proof of Claim, the last transaction date and charge off date was February 12, 2015. The date of last payment on the Statement of Account Information attached to the Proof of Claim states February 2015.

Review of Proof of Claim No. 3-1

Proof of Claim No. 3-1 states that this claim is based on a "credit card." Proof of Claim No. 3-1, ¶ 8. The Attachment to Proof of Claim No. 3 states that the last "transaction date" was March 2009. The court understands this to be the last "charge," extension of credit, obtained by the creditor's predecessor in interest. *Id.*, p. 7.

While the last transaction dates back more than a decade, the Attachment also states that the last payment was made by Debtor in February 2015, while the account was charged off in October 2009.

What this information tells the court is that notwithstanding the charge off and termination of credit being extended to Debtor, Debtor has been making payments under some form of repayment plan. The Attachment does not state what such repayment plan was, and when the Debtor defaulted on the repayment plan.

Review of Debtor's Testimony Under Penalty of Perjury

Debtor has provided testimony under penalty of perjury in support of this Objection in the form of a declaration. Declaration, Dckt. 104. In his Declaration, Debtor makes the following theoretical assertion:

> 3. I further assert that the claim and the attachments, if any, appended to the claim do not sufficiently authenticate and substantiate the asserted balance and class of the underlying debt. Specifically, I object to the claim because Out of Statute.

Declaration ¶ 3, Dckt. 104.

In stating this, Debtor admits that he has not reviewed the claim, his being devoid of any information or personal knowledge of whether or not there are attachments to the Proof of Claim. Rather, it appears that Debtor affirmatively states that his counsel prepared, and he knowingly signed, a declaration for which he had no personal knowledge. Further, that Debtor has clearly demonstrated that he will sign, under penalty of perjury, whatever his attorney puts in front of him, so long as his attorney tells him, "say under penalty of perjury what you don't' know, 'And You Can WIN!' "

Additionally, Debtor provides his expert, personally known, legal opinion that the claim is "Out of Statute.": *Id.* Debtor also provides his expert, personally known, legal opinion that "the claim is time barred in accordance with California law."

Conspicuously absent from the Declaration is any testimony about Debtor's payment plan, agreement, or when Debtor defaulted on such payment plan. This is all information that Debtor clearly has in his possession/knowledge and needs, in providing personal knowledge testimony in good faith, in

support of this Objection.

Further, nothing in the Declaration provides any basis for Debtor having such legal expertise personal knowledge. A review of the California State Bar website for attorneys licensed in California (including those suspended and disbarred) does not include an attorney with the name Thomas Pearson.

Even more concerning is that Debtor's counsel has knowingly prepared a declaration which includes false information. This appears to be carefully constructed to try and mislead the court. Such practices are not consistent with being admitted to practice in the Eastern District of California by the District Court.

DISCUSSION

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

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

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

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

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

Cal. C.C.P. § 337(d).

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

> Except as provided in section 524 of this title, if **applicable nonbankruptcy law**, an order entered in a nonbankruptcy proceeding, or an agreement **fixes a period for commencing or continuing a civil action** in a court other than a bankruptcy court **on a claim against the debtor**, or against an individual with respect to which such individual is protected under section 1201 or 1301 of this title, and such period has not expired before the date of the filing of the petition, then **such period does not expire until the later of**--
>
> > (1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or
> >
> > **(2) 30 days after notice of the termination or expiration of the stay under section 362, 922, 1201, or 1301 of this title, as the case may be, with respect to such claim.**

A review of Proof of Claim No. 3-1 lists the charge off date as October 2009. The court takes judicial notice that a creditor does not "charge off" an account if payments are being made or further credit is being extended. (This basic fundamental point of credit transactions is commonly known by both creditors and consumers alike.)

However, the evidence relied upon by Debtor, the attachments to Proof of Claim No. 3-1 indicate that Debtor has or had a repayment plan for this obligation with the Creditor. Debtor making payments to creditor through February 2015, while the charge off occurred in 2009, indicates that the default occurred sometime after February 2015. Unfortunately, Debtor has chosen not to provide that necessary information to the court.

Based on the evidence before the court, the creditor's claim is overruled without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of American Express National Bank ("Creditor") filed in this case by Thomas Michael Pearson, the Chapter 13 Debtor ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Proof of Claim Number 3-1 of American Express National Bank is overruled without prejudice.

FINAL RULINGS

18. **20-20206-E-13** **CATHY BRETT** **MOTION TO CONFIRM PLAN**
BLG-1 **Chad Johnson** **2-14-20 [25]**

Final Ruling: No appearance at the April 7, 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, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 14, 2020. By the court's calculation, 53 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy 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, Cathy Frances Brett ("Debtor") has provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on March 5, 2020. Dckt. 30. 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, Cathy Frances Brett ("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 14, 2020, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"),for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

19. 15-28908-E-13 MJD-7 — WILLIAM/SARAH MCGARVEY — Matthew DeCaminada — MOTION TO MODIFY PLAN — 2-24-20 [131]

Final Ruling: No appearance at the April 7, 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, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 24, 2020. By the court's calculation, 43 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 debtors, William Norbert McGarvey and Sarah Marie McGarvey ("Debtor"), have filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response indicating non-opposition on March 24, 2020. Dckt. 138. 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 debtors, William Norbert McGarvey and Sarah Marie McGarvey ("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 24, 2020, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

20. **16-21719-E-13** **JANEE FARRIS** **MOTION TO MODIFY PLAN**
PSB-4 **Pauldeep Bains** **3-3-20 [85]**

Final Ruling: No appearance at the April 7, 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 March 3, 2020. By the court's calculation, 35 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, Janee Marie Farris ("Debtor"), has filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on March 24, 2020. Dckt. 96. 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, Janee Marie Farris ("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 March 3, 2020, is confirmed. Debtor's Counsel shall

prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

21. **19-26020-E-13 FF-3** **DAMION HRIBIK** **Gary Fraley** **MOTION TO CONFIRM PLAN** **3-2-20 [41]**

DEBTOR DISMISSED: 3/10/20

Final Ruling: No appearance at the April 7, 2020 hearing is required.

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

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

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

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

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

22. **18-24423-E-13** **PAUL ULBRICH** **MOTION TO MODIFY PLAN**
SS-3 **Scott Shumaker** **3-2-20 [46]**

Final Ruling: No appearance at the April 7, 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, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 2, 2020. 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 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, Paul Gerard Ulbrich ("Debtor"), has filed evidence in support of confirmation.

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response indicating non-opposition on March 24, 2020. Dckt. 55. Trustee requests that Section 7.01, 2.01 be corrected to be $65,186.00 total paid in through March 2020 (month 20) with payments of $4,145.00 per month commencing April 24, 2020 for the remaining term of the plan.

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, Paul Gerard Ulbrich ("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 March 2, 2020, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

23. 19-22842-E-13 MET-1 DEBRA CAMPBELL MaryEllen Terranella MOTION TO MODIFY PLAN 2-19-20 [23]

Final Ruling: No appearance at the April 7, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on February 19, 2020. By the court's calculation, 48 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy 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, Debra Campbell ("Debtor"), has filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on April 1, 2020. Dckt. 36. 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, Debra 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 Modified Chapter 13 Plan filed on February 19, 2020, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

24. 19-26291-E-13 MJD-3 — LINDA CONKLING — Matthew DeCaminada — MOTION TO EMPLOY FREDERICK MAX GROUP AS BROKER(S) — 3-10-20 [53]

Final Ruling: No appearance at the April 7, 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, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 10, 2020. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Employ 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 Employ is granted.

Linda Christina Conkling ("Debtor") seeks to employ Diana Frederick and Frederick Max Group ("Broker") pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a)

and 330. Debtor seeks the employment of Broker to market and sell Debtor's real property located at 2483 American River Drive, Sacramento, California.

Debtor argues that Broker's appointment and retention is necessary to market and sell the Property. The terms of employment are summarized as follows: Broker is to market the Property; Broker is to procure and submit all purchase offers to Debtor; and if Property is sold, Broker is to receive upon completion of any sale, a real estate sales commission of 4.00% of the purchased price.

Diana Frederick, a Licensed Real Estate Broker of Frederick Max Group, testifies that she has extensive knowledge of the area in which the Property is located; will assist Debtor in negotiating the sale of the Property; by marketing and selling the Property for a commission of 4.00% of the purchase price. Diana Frederick testifies she and the company do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

Pursuant to § 327(a), a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals, including attorneys, to represent or assist the trustee in carrying out the trustee's duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must not hold or represent an interest adverse to the estate and be a disinterested person.

Section 328(a) authorizes, with court approval, a trustee or debtor in possession to engage the professional on reasonable terms and conditions, including a retainer, hourly fee, fixed or percentage fee, or contingent fee basis. Notwithstanding such approved terms and conditions, the court may allow compensation different from that under the agreement after the conclusion of the representation, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of fixing of such terms and conditions.

Taking into account all of the relevant factors in connection with the employment and compensation of Broker, considering the declaration demonstrating that Broker does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Diana Frederick as Broker for the Chapter 13 Estate on the terms and conditions set forth in the Exclusive Authorization and Right to Sell Residential Listing Agreement filed as Exhibit A, Dckt. 56. Approval of the commission is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

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 Employ filed by Linda Christina Conkling ("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 Employ is granted, and Debtor is authorized to employ Diana Frederick and Frederick Max Group as Broker for Debtor on the terms and conditions as set forth in the Exclusive Authorization and Right to Sell Residential Listing Agreement filed as Exhibit A, Dckt. 56.

IT IS FURTHER ORDERED that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.

IT IS FURTHER ORDERED that no hourly rate or other term referred to in the application papers is approved unless unambiguously so stated in this order or in a subsequent order of this court.

IT IS FURTHER ORDERED that except as otherwise ordered by the Court, all funds received by broker in connection with this matter, regardless of whether they are denominated a retainer or are said to be nonrefundable, are deemed to be an advance payment of fees and to be property of the estate.

25. 17-24379-E-13 GEL-2 — MARCIS/MARTI BEUTLER — Gabriel Liberman — MOTION TO MODIFY PLAN — 3-2-20 [67]

Final Ruling: No appearance at the April 7, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 2, 2020. 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 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 debtors, Marcis Allan Beutler and Marti Leeann Beutler ("Debtor"), have filed evidence in support of confirmation. The

Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on March 24, 2020. Dckt. 73. 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 debtors, Marcis Allan Beutler and Marti Leeann Beutler ("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 March 2, 2020, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.