

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

April 28, 2020 at 2:00 p.m.

1.	17-21208 -C-13	LOUIS BROWN	MOTION TO MODIFY PLAN
	MET -7	Mary Ellen Terranella	3-3-20 [160]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 3, 2020. By the court's calculation, 56 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

<p>The Motion to Confirm the Modified Plan is denied.</p>
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The debtor, Louis Frank Brown ("Debtor"), through his son and appointed representative Louis G. Brown, seeks confirmation of the Modified Plan to cure a plan payment delinquency of roughly \$9,000.00. The Modified Plan provides for payments of \$1,641.10 per month for 36 months \$3,001.00 per month for 24 months. Modified Plan, Dckt. 164. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

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CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on March 30, 2020. Dckt. 168. Trustee opposes confirmation on the following grounds:

1. Debtor is \$3,001.10 delinquent in plan payments.
2. Debtor has not filed supplemental schedules demonstrating Debtor's ability to make the plan payments.

DEBTOR'S REPLY

Debtor filed a Reply on April 21, 2020, reporting that current schedules have been filed, and that debtor will be current by April 30, 2020 since Debtor's representative is paid the last day of each month.

DISCUSSION

The present case is an unusual one. At outset, the case was funded by the Debtor's income. Debtor was receiving \$1,444.00 from social security every month, and her son was paying rent in the amount of \$1,425.00. Dckt. 9. She claimed to have three dependents, which were her 57 year old son and two grandchildren, then-aged 16 and 18. *Id.*

Debtor's first plan was confirmed August 17, 2017. Dckt. 69. But in 2018, a modified plan had to be proposed and confirmed to cure a delinquency of at least \$6,711.28. Declaration, Dckt. 85 at ¶ 3.

Then on May 12, 2019, Debtor passed away. Declaration, Dckt. 134. The Debtor's son was approved by the court as a representative (Dckt. 149), and new modified plan was filed to cure a delinquency of at least \$8,187.34, which relied solely on the son/representative's contributions. Declaration, Dckt. 134.

The present third modified plan was filed to cure a roughly \$9,000 delinquency which Debtor's son and representative explains resulted largely from contributions to Debtor's granddaughter's wedding. Debtor's son/representative has not argued the contributions were reasonable and necessary expenses of the Debtor.

In response to the Trustee's opposition, Debtor's son/representative filed supplemental schedules. Dckts. 172, 173. But, it is clarified "This Current Schedule I is that of the deceased debtor's son, debtor's substituted party in this case." The Debtor has no income or expenses.

Thus, a preliminary question is whether Debtor is eligible to be a debtor, since "Only an individual with regular income . . . may be a debtor under chapter 13 of this title." 11 U.S.C. § 109(e).

Even assuming that requirement is met, the case history shows that either the plan is not feasible, or the case is not being prosecuted in good faith. On an annual basis, Debtor is coming up short about \$8,000.00.

The recent expenses that caused substantial delinquency were not reasonable and necessary expenses of the Debtor. Rather, it was the Debtor's

son/representative who chose to contribute less to the plan because he wanted to spend his money on other things.

There is no provision in the plan or elsewhere stopping the Debtor's son/representative from continuing to underfund the plan. Given the present case history, it seems more likely than not the plan will continue to be underfunded. Therefore, it is not feasible and not confirmable. 11 U.S.C. § 1325(a)(6).

Based on the foregoing, the Motion is denied.

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

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

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

IT IS ORDERED that Motion to Confirm the Modified Plan is denied.

THRU #3

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 13, 2020. By the court's calculation, 46 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied.
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The debtor, Fouad Afif Mizyed ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for payments of \$3,175 for one month, and \$3,545 for 59 months. Amended Plan, Dckt. 24. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CREDITOR'S OPPOSITION

Wells Fargo Bank, N.A. , as Trustee for Structured Adjustable Rate Mortgage Loan Trust, Mortgage Pass-Through Certificates, Series 2007-4("Creditor") holding a secured claim filed an Opposition on March 26, 2020. Dckt. 37.

Creditor argues the plan fails to provide for its prepetition arrearages, which total \$5,297.35, and therefore fails to provide for the full amount of its claim.

DEBTOR'S REPLY

Debtor's counsel filed a Reply indicating that counsel is in discussions with the Creditor over whether there is any prepetition arrearage, and representing that Debtor's counsel believes Creditor will withdraw its opposition. Dckt. 39.

DISCUSSION

While Debtor's counsel believes Creditor will withdraw its opposition, Creditor to date has not done so.

Creditor's sole argument in opposition of confirmation is that the plan "does not provide for the full value of Creditor's claim." It is not clear if this correct.

Section 3.02 of the plan specifically provides that creditor's proof of claim, and not the plan, determines the amount and class of a claim. Dckt. 24.

Nevertheless, without a specified prepetition arrearage dividend, the plan might not be capable of administration by the Trustee, and thereby not feasible. That is reason to deny confirmation. 11 U.S.C. § 1326(a)(6).

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

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

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

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

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

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

Local Rule 9014-1(f)(2) Objection-Hearing Not 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 18, 2020. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

The Objection is ~~XXXXXX~~

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

- A. The proposed plan provides payment on a second deed of trust as to 3702 Longhorn Creek, San Antonio, Texas, which is not a claim listed on Schedule D.
- B. The Debtor lists 4802 Neer, San Antonio, Texas on Schedule A but does not list any debt on Schedule D. However, Schedule J shows a monthly expense to Mr. Cooper and for two monthly HOA fees.

DEBTOR'S REPLY

Debtor filed a Reply on March 18, 2020. The Reply states that an Amended Schedule D has been filed listing the second deed of trust held by Real Time Resolutions.

The Reply also states that scheduled expenses are for the 3702 Longhorn Creek property, as the other property was paid for by Debtor's disabled brother and sister, and sold in February 2020. However, Debtor also notes Amended Schedules I and J have been filed to reflect accidentally omitted rental income and expenses.

DISCUSSION

The Debtor filed Amended Schedule D to list the second deed of trust held by Real Time Resolutions. Dckt. 33. Debtor also clarified there is no debt secured by the 4802 Neer, San Antonio, Texas property, which debtor is no longer in possession of.

At the hearing, **xxxxxxxxxxxxxxxxxx**.

The court shall continue the hearing on this Objection to be heard alongside Debtor's Motion, so that all parties in interest can weigh in on plan confirmation.

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 **xxxxxxxxxxxxxxxxxx**.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 18, 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 XXXXX.

The debtor, Shauna Tara Jean ("Debtor") seeks confirmation of the Modified Plan to increase the plan term from 36 to 60 months. The Modified Plan provides for payments of \$1,744.00 per month for 2 months, \$2,826.00 per month for 3 months, and \$1,598.00 per month for 55 months. Modified Plan, Dckt. 56. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on March 30, 2020. Dckt. 59. Trustee opposes confirmation because Debtor is delinquent \$2,596.00.

DEBTOR'S RESPONSE

Debtor filed a Response on April 6, 2020, reporting that the delinquency has been cured.

DISCUSSION

Generally, a plan payment delinquency demonstrates that the plan proposed is not actually feasible, and therefore cannot be confirmed. Debtor's counsel filed a Response reporting that the delinquency has been cured, but there is no evidence supporting the allegation.

At the hearing the parties reported, **xxxxxxxxxxxxxxxx**.

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, Shauna Tara Jean ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Modified Plan is **xxxxxx**.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 6, 2020. By the court's calculation, 53 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Approval of Compromise is granted.
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The debtor Stephen James McAllister ("Debtor") filed this motion seeking approval of a settlement agreement relating to a marital dissolution and property division with his spouse Jennifer McAllister ("Debtor's Spouse").

The Motion summarizes the terms as follows:

- a. The Property located at 10908 Cristobal Way Rancho Cordova, CA 95670 ("property") will be retained by Debtor as his sole and separate property with no equalization payment owed to wife.
- b. Debtor will refinance the property and ensure wife's name is removed from the Bank of America mortgage and the 2nd mortgage with USAA within one year from September 11, 2019.
- c. The 2003 Hummer H2 will be retained by Debtor with no offsetting to wife.

- d. Wife will retain the 2017 Hyundai Ioniq with no offsetting owed to Debtor. Debtor is transferring his community property interest to his wife and is being transferred out of the bankruptcy estate.
- e. All bank accounts in each parties' name will be retained to each party with no offsetting owed to the other party.
- f. Wife will retain 100% of her retirement accounts with no offsetting owed to the Debtor including her STRS, 457(b), and 403(b) retirements.
- g. Wife will retain her Charles Schwab account incurred prior to marriage.
- h. Debtor will retain 100% of all debts in his name and will hold wife harmless.
- i. Wife will retain 100% of all debts in her name and will hold Debtor harmless.
- j. Debtor's train collection will be retained by Debtor with no offsetting owed to wife.
- k. All personal belongings in each person's possession will be confirmed to each party with the exception of the following:
 - aa. Wife shall return the engagement ring to her possession to the husband upon signing agreement. Debtor shall return wife's jewelry and jewelry cabinet if he locates it at his property. Debtor is transferring his community property interest to his wife and is being transferred out of the bankruptcy estate.
- l. Wife will pay the Bank of America Mortgage, USAA 2nd mortgage, property taxes, and homeowners insurance for one year until October 2020. This is in lieu of spousal support, both parties waive spousal support.
- m. Sacramento County Utilities bill balance will be paid ½ by each party.
- n. Neither party will draw on the USAA 2nd mortgage. Wife's obligation to pay shall be no more than \$375/month. Anything above that will be the responsibility of the Debtor.
- o. This agreement is contingent upon the bankruptcy court approving the settlement agreement.
- p. Wife will sign a quit claim deed within 30 days to transfer title to the Debtor.
- q. In the event Debtor does not refinance the Bank of America and USAA mortgages with in one year or by October 1, 2020 then the property shall be listed for sale and all

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proceeds will be retained to the Debtor with no equalization owed to Wife.

r. While Wife is paying the property taxes, mortgage, 2nd mortgage, and insurance on the property, she is able to claim these amounts on her tax returns.

DISCUSSION

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

1. The probability of success in the litigation;
2. Any difficulties expected in collection;
3. The complexity of the litigation involved and the expense, inconvenience, and delay necessarily attending it; and
4. The paramount interest of the creditors and a proper deference to their reasonable views.

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

Probability of Success

Debtor notes Debtor could probably obtain spousal support if the matter were litigated, but notes the practical limitation that Debtor may not be able to fund the litigation.

The court agrees, and finds that this factor weighs in favor of settlement.

Difficulties in Collection

Debtor asserts his spouse has stable income, but argues there is still uncertainty around collection.

The court agrees, and finds that this factor weighs in favor of settlement.

Expense, Inconvenience, and Delay of Continued Litigation

Debtor believes the agreement to be fair and that gets him the most amount of value in exchange for expedited time and limiting legal costs or a lengthy litigation. Debtor argues litigation to prove spousal support and rights to retirement would have been expensive (estimated \$10,000-\$15,000), it would require a trial, which would take some time to schedule and prepare

for, and could be subject to appeal.

The court agrees that the cost of litigation would likely deplete any potential additional recovery beyond the settlement amounts. This factor weighs in favor of settlement.

Paramount Interest of Creditors

Debtor argues settlement is in the best interest of creditors because it will allow him to maintain plan payments and eventually complete the case.

The court agrees, and finds that this factor weighs in favor of settlement.

Consideration of Additional Offers

At the hearing, the court announced the proposed settlement and requested that any other parties interested in making an offer to Movant to purchase or prosecute the property, claims, or interests of the estate present such offers in open court. At the hearing -----.

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because it will allow him to maintain plan payments and eventually complete the case. The Motion is granted.

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

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

The Motion to Approve Compromise filed by debtor Stephen James McAllister ("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 for Approval of Compromise between Movant and Jennifer McAllister ("Settlor") is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Exhibit A in support of the Motion (Dckt. 35).

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 February 14, 2020. By the court's calculation, 74 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, Stephen Wilfred Meyer and Paula Rana Meyer ("Debtor") seek confirmation of the Modified Plan to adjust the payment to reflect a trial loan modification. Declaration, Dckt. 33. The Modified Plan provides for \$9,899 paid through month 6, for payments of \$1,137.00 from months 7-60, and for reclassification of Loancare LLC's claim from Class 1 to Class 4. Modified Plan, Dckt. 36. 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 April 6, 2020. Dckt. 47. Trustee opposes confirmation on the following grounds:

1. Debtor is \$1,137.00 delinquent in plan payments.
2. Debtor's modified Plan proposes to reclassify

Loancare, LLC regarding Debtor's mortgage and pre-petition arrears payments from Class 1 to Class 4 based on a trial loan modification that has not been approved by the Court.

DISCUSSION

Debtor is \$1,137.00 delinquent in plan payments. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. See 11 U.S.C. § 1325(a)(6).

Additionally, the current proposed plan has not been demonstrated to be feasible because it relies on a trial loan modification which the court has not approved, and which the Debtor has not sought approval for.

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

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

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

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

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

THRU #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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 3, 2020. By the court's calculation, 53 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is XXXXXXXXXX

The debtor, Octavio Gonzalez Saenz and Diana Carolina Saenz ("Debtor") seek confirmation of the Modified Plan to account for recent loan modification negotiations. Declaration, Dckt. 77. The Modified Plan provides for \$25,085.38 paid through December 2019, and payments of \$3,6888 for the remaining plan term. Modified Plan, Dckt. 75. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on February 7, 2020. Dckt. 83. Trustee opposes confirmation on the following grounds:

1. Debtor is \$3,688 delinquent in plan payments.
2. The plan relies on approval of a trial loan modification. Those payments to PennyMac Loan Services, LLC, are currently unauthorized.
3. Debtor filed supplemental schedules as exhibits only.

DEBTOR'S REPLY

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

FEBRUARY HEARING AND SUPPLEMENTAL PLEADINGS

At the February 2020 hearing the court granted a continuance so the motion To Confirm could be heard alongside Debtor's Motion To Approve Loan Modification. Dckt. 99.

Thereafter, Trustee filed a Supplemental Response noting (1) Debtor is still \$1,022.00 delinquent, and (2) the plan relies on the loan modification being approved.

Debtor filed a Supplemental Reply representing that Debtor is now current. Dckt. 106.

DISCUSSION

A review of the docket shows the Motion To Approve Loan Modification has been granted.

At the hearing, the parties reported whether Debtor has been able to remain current in plan payments **xxxxxxxxxxxxxx**.

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

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

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

IT IS ORDERED that the hearing on the Motion to Confirm the Modified Plan is **xxxxxxxxxx**

Final Ruling: No appearance at the April 28, 2020, hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 18, 2020. By the court's calculation, 70 days' notice was provided. 28 days' notice is required.

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

The Motion to Incur Debt is granted.

The debtors Octavio Gonzalez Saenz and Diana Carolina Saenz ("Debtor") filed this Motion seeking approval of a loan modification agreement with Penny Mac Loan Servicing. The present modification would permanently recapitalize the arrearages owing.

The court already approved of the trial loan modification payments in June 2019. Dckts. 62, 63.

On April 6, 2020, The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response indicating non-opposition.

Based on the evidence presented, the loan modification is in the best interest of the Estate and creditors. The Motion is granted.

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

Findings of Fact and Conclusions of Law are stated in the

Civil Minutes for the hearing.

The Motion to Incur Debt filed by Octavio Gonzalez Saenz and Diana Carolina Saenz ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Octavio Gonzalez Saenz and Diana Carolina Saenz is authorized to incur debt pursuant to the terms of the agreement, Exhibit A, Dckt. 93.

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 April 7, 2020. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a) (3) (requiring twenty-one days' notice).

The Motion for Approval of Compromise 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 for Approval of Compromise is denied without prejudice.

The debtor, Desiree Renee Moreno ("Debtor") requests that the court approve a compromise regarding Debtor's worker's compensation claims in four cases (Nos. ADJ11793408; ADJ11791770; ADJ11791771; ADJ11792165).

However, the Motion does not provide enough detail for the court to determine whether settlement should be approved.

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

1. The probability of success in the litigation;

2. Any difficulties expected in collection;
3. The complexity of the litigation involved and the expense, inconvenience, and delay necessarily attending it; and
4. The paramount interest of the creditors and a proper deference to their reasonable views.

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

The Motion recites the above factors, but does not apply them to the settlement at hand. The court is not provided any information about the litigation, difficulty of collection, or whether it is in the best interest of creditors to settle.

The motion states that the litigation is listed on Schedule A/B; that the settlement amount was fully exempted on Schedule C; that the events giving rise to claims arose between 2015 and 2018; that Debtor's state court legal counsel is Guadalupe Tong; that the settlement is based on a fully executed order approving compromise signed by a worker's compensation judge; and that Debtor requests approval of the settlement.

The settlement agreement and executed order were not filed in support of the Motion.

The motion is denied without prejudice because insufficient information has been provided for the court to evaluate the acceptability of the settlement.

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

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

The Motion to Approve Compromise filed by the debtor, Desiree Renee Moreno ("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 for Approval of Compromise is denied without prejudice.

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

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 17, 2020. By the court's calculation, 42 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"), filed an Objection to Confirmation on March 17, 2020 opposing confirmation of the debtor Deshaunna Tranise Payne's ("Debtor") proposed Chapter 13 plan. Dckt. 18.

Thereafter, Trustee filed a Status Report indicating Trustee's sole remaining ground for opposition is that Debtor has yet to commence plan payments and is \$2,015.43 delinquent. Dckt. 29.

Debtor's counsel filed a Reply on April 21, 2020, indicating Debtor has an ability to pay and will be current by the hearing date.

DISCUSSION

Debtor is \$2,015.43 delinquent in plan payments. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. See 11 U.S.C. § 1325(a) (6).

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 3, 2020. By the court's calculation, 56 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, Michael Eugene Boyd and Sandra Danyelle Palen Boyd ("Debtor"), seek confirmation of the Amended Plan. The Amended Plan provides for payments of \$2,755.00 per month for 7 months and \$3,039.00 per month for 53 months, and provides for a 38% dividend to unsecured claims which total \$96,318.88. Amended Plan, Dckt. 40. 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 April 14, 2020. Dckt. 46. Trustee opposes confirmation on the following grounds:

1. The Calculation of Disposable Income (Form 122C-2) shows that the debtors' monthly disposable income is \$4,598.18 and the debtors must pay no less than \$275,890.80 to unsecured non-priority creditors. The trustee calculates that the plan will pay only

\$37,173.29 or 38% to unsecured non-priority creditors.

2. Based on the paystubs provided for the pay periods of June 6, 2019 through July 20, 2019, Debtor made an approximate average gross monthly income of \$24,059.12. Schedule I at Docket #1, page 34, shows a gross monthly income of \$17,407.74.
3. The Debtor testified at the Meeting of Creditors that his telephone expense listed on Schedule J (Docket #1, Page 37) was listed incorrectly at \$665 a month when it should be \$200 a month. In addition, the Debtor is repaying a 401k loan through his payroll deductions in the amount of \$847.69 per pay period. He has failed to disclose when this deduction will end and the plan fails to include an increase in the plan payment once that loan is paid in full.

DISCUSSION

The Trustee's Objection (Dckt. 18) to Debtors' prior proposed plan included the same grounds for opposing confirmation. That Objection was sustained (Dckt. 30) after Debtor filed a Reply conceding the plan was not confirmable and representing that amended schedules would be filed within 30 days. Dckt. 27.

Debtor has not filed amended schedules, or otherwise addressed the grounds for opposition which Debtor already conceded rendered the plan unconfirmable, which leaves in question whether the present plan was proposed in good faith.

The Plan fails to provide all Debtor's projected disposable income under 11 U.S.C. § 1325(b)(2). Thus, the court may not approve the Plan. 11 U.S.C. § 1325(b)(1)

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, Michael Eugene Boyd and Sandra Danyelle Palen Boyd ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 23, 2020. By the court's calculation, 65 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, Christopher G. McIntosh ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for \$1400 paid through the first 4 months, and for payments of \$385 for the remaining plan term. Amended Plan, Dckt. 78. 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 April 14, 2020. Dckt. 85. Trustee opposes confirmation on the following grounds:

1. The plan's feasibility relies on either valuing creditor EDD's secured claim or avoiding its judgement lien. But, no motion is pending for that purpose.
2. The trustee calculates that the plan will take

approximately 123 months to complete which exceeds the maximum length of 60 months pursuant to 11 U.S.C §1322 (d) and which results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. Section 1325(b) (4).

DISCUSSION

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. The trustee calculates that the plan will take approximately 123 months to complete. Declaration, Dckt. 86. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

Additionally, plan's feasibility relies on either valuing creditor EDD's secured claim or avoiding its judgement lien. However, no motion has been filed seeking that relief. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a) (6).

The 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, Christopher G. McIntosh ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 12, 2020. By the court's calculation, 47 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

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

The debtor, Selenia Brittany Michelle Charles ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for payments of \$250 for 36 months, and a 2% dividend on unsecured claims, which total \$39,451.18. Amended Plan, Dckt. 25. 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 April 14, 2020. Dckt. 32. Trustee opposes confirmation on the following grounds:

1. Debtor is \$500 delinquent in plan payments.
2. At Section 3.06, the plan specifies a monthly payment of \$0.00 for administrative expenses.
3. The trustee calculates that the plan will take

approximately 44 months to complete which is 8 months longer than the proposed Duration of Payments of 36 months. Pursuant to §2.03 of the mandatory form plan, monthly payments may only continue for an additional 6 months.

DISCUSSION

Debtor is \$500 delinquent in plan payments, which represents multiple months of the \$250.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. See 11 U.S.C. § 1325(a)(6). The plan is also not feasible because no monthly dividend to administrative expenses was specified.

Additionally, the Plan will complete in 44 months mathematically. Declaration, Dckt. 33. This is a breach of §2.03 of the plan.

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, Selenia Brittany Michelle Charles ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

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

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

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

The Motion to Value Collateral and Secured Claim of StateBridge Company, LLC ("Creditor") is granted, and Creditor's secured claim is determined to have a value of \$0.00.

The Motion to Value filed by Vernon Pryor and Judith Pryor ("Debtor") to value the secured claim of StateBridge Company, LLC ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 12. Debtor is the owner of the subject real property commonly known as 147 2nd Avenue, Orland, California ("Property"). Debtor seeks to value the Property at a fair market value of \$220,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. See FED. R. EVID. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

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

APRIL 7, 2020 HEARING

At the April 7 hearing, the court was informed counsel for Creditor intended to appear but missed the cutoff for telephonic appearances. It was also reported Creditor wanted time to seek an appraisal.

The court continued the hearing to April 28, 2020. Civil Minutes, Dckt. 22.

DISCUSSION

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

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

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

The Motion to Value Collateral and Secured Claim filed by Vernon Pryor and Judith Pryor ("Debtor") having been presented to the court, and upon review of the

pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of StateBridge Company, LLC ("Creditor") secured by a second in priority deed of trust recorded against the real property commonly known as 147 2nd Avenue, Orland, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$220,000.00 and is encumbered by a senior lien securing a claim in the amount of \$234,809.84, which exceeds the value of the Property that is subject to Creditor's lien.

THRU #16

Final Ruling: No appearance at the April 28, 2020, hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 trustee, creditor, and Office of the United States Trustee on March 10, 2020. By the court's calculation, 49 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of Hyundai Capital America dba Hyundai Motor Finance ("Creditor") is denied without prejudice.

The debtor Paul Francis Ottaviano filed this Motion seeking to value the secured claim of creditor Hyundai Capital America dba Hyundai Motor Finance.

The Proof of Service indicates the creditor was served at

The Managing agent for service of process
Hyundai Capital America (HCA) dba
Hyundai Motor Finance
P. O. Box 20809
Fountain Valley, CA 92728

Dckt. 44. A review of the California Secretary of State's website shows this is neither the address for the creditor, or its registered agent.

Therefore, the Motion is denied without prejudice.

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

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

The Motion to Value Collateral and Secured Claim filed by Paul Francis Ottaviano ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on March 10, 2020. By the court's calculation, 49 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 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 Plan is denied.
--

The debtor, Paul Francis Ottaviano ("Debtor") seeks confirmation of the Chapter 13 Plan. The Plan provides for payments of \$2,359.00 for 60 months. Plan, Dckt. 35. 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 April 14, 2020. Dckt. 59. Trustee opposes confirmation on the following grounds:

1. Debtor is \$807.00 delinquent in plan payments.
2. Inclusive of trustee's fees, the plan mathematically requires a monthly payment of \$2,484.37. However, the plan proposes payments of \$2,359 for months 1-7.
3. The plan relies on the court valuing Hyundai Motor Finance Co.'s secured claim.

4. The Rights and Responsibilities state that the Attorney is charging \$0.00 total with \$0.00 paid by the Debtor prior to the hearing. However, the plan and the Disclosure of Attorney Compensation state the total amount of fees charged is \$4,000 with \$1,000 paid prior to filing and \$3,000 to be paid thru the plan. The Attorney has indicated in the plan, by checking the box at section 3.05, that she is "opting in" to Local Bankruptcy Rule 2016-1 for payment of fees. To date, the Debtor has failed to amend the Rights and Responsibilities.

DISCUSSION

The current proposed plan has not been demonstrated to be feasible. The debtor is delinquent, which generally shows an inability to make the payments. Debtor also has proposed payments of \$2,359 for months 1-7, which is less than what is mathematically required. Debtor also needs to amend the Rights and Responsibilities to show the correct attorney's fees, and to have the court enter an order valuing the secured claim of Hyundai Motor Finance Co.

As to the Motion To Value (Dckt. 40), a review of the docket shows it was denied without prejudice do to improper service.

All the foregoing shows the plan is not feasible.

The 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 Chapter 13 Plan filed by the debtor, Paul Francis Ottaviano ("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 Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

FINAL RULINGS

- | | | | |
|-----|--|-----------------------------------|--|
| 17. | <u>20-20907</u> -C-13
<u>DPC</u> -1 | JEREMY ROCHHOLZ
Candace Brooks | OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
3-17-20 [<u>12</u>] |
|-----|--|-----------------------------------|--|

Final Ruling: No appearance at the April 28, 2020, hearing is required.

The Chapter 13 Trustee, David Cusick (the "Trustee"), having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Objection to Confirmation was dismissed without prejudice, the matter is removed from the calendar, and the Chapter 13 Plan filed on February 18, 2020, is confirmed.**

Counsel for the debtor, Jeremy R. Rochholz ("Debtor") shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Trustee for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

18. [20-20599](#)-C-13 SHANNAN TAYLOR
[DPC-1](#) Stephan Brown

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P CUSICK
3-17-20 [[21](#)]

Final Ruling: No appearance at the April 28, 2020, hearing is required.

The Chapter 13 Trustee, David Cusick (the "Trustee"), having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Objection to Confirmation was dismissed without prejudice, the matter is removed from the calendar, and the Chapter 13 Plan filed on February 18, 2020, is confirmed.**

Counsel for the debtor, Shannan Natalie Taylor ("Debtor") shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Trustee for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

19. [20-20344](#)-C-13 RAYMOND/MARLEN GALLO
[JHR](#)-1 Stephan Brown

OBJECTION TO CONFIRMATION OF
PLAN BY CREDITORS BASTOW FAMILY
LIMITED PARTNERSHIP, CRAIG
FILICE, TRUSTEE OF THE PETER C.
FILICE EXEMPTION TRUST, CRAIG
P. FILICE, JEFFREY BASTOW AND
CANDACE BASTOW, TRUSTEE OF PETER
C. FILICE EXEMPTION
TRUST, MILA J. MURPHY, TRUSTEE
OF THE MILA J. MURPHY LIVING
TRUST

Final Ruling: No appearance at the April 28, 2020, hearing is required.

The case having previously been dismissed, the Objection is
overruled 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 Objection To Confirmation 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 Objection is overruled as
moot, the case having been dismissed.

Final Ruling: No appearance at the April 28, 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 5, 2020. By the court's calculation, 54 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, Ernest Nathaniel Jackson ("Debtor"), has filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response indicating non-opposition / statement of non-opposition on March 30, 2020. Dckt. 35. 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, Ernest Nathaniel Jackson ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on March 4, 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. [20-20328](#)-C-13 CARTEL BORING
[DPC](#)-2 Pro Se

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
3-16-20 [[24](#)]

THRU #22

Final Ruling: No appearance at the April 28, 2020, hearing is required.

The case having previously been dismissed, the Objection is overruled 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 Objection To Confirmation 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 Objection is overruled as moot, the case having been dismissed.

Final Ruling: No appearance at the April 28, 2020, hearing is required.

The case having previously been dismissed, the Objection is overruled 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 Objection To Confirmation 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 Objection is overruled as moot, the case having been dismissed.

Final Ruling: No appearance at the April 28, 2020, hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on March 31, 2020. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). 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.

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>
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The debtor filed this Motion requesting voluntary dismissal of the case. 11 U.S.C. § 1307 provides in relevant part:

(b) On request of the debtor at any time, if the case has not been converted under section 706, 1112, or 1208 of this title, the court shall dismiss a case under this chapter. Any waiver of the right to dismiss under this subsection is unenforceable.

Based on the debtor's request, and this case not previously having been converted, the Motion is granted and the case is dismissed.

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

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

The Motion to Dismiss the Chapter 13 case filed by the debtor Michael David Lafolley 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 Dismiss is granted,
and the case is dismissed.

24. [18-22077](#)-C-13 NOEL LASCANO
[MRL-1](#) Mikalah Liviakis
DEBTOR DISMISSED: 03/13/20

MOTION TO MODIFY PLAN
3-1-20 [[33](#)]

Final Ruling: No appearance at the April 28, 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 Modified 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.

Final Ruling: No appearance at the April 28, 2020, hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 12, 2020. By the court's calculation, 47 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion. The defaults of the non-responding parties in interest are entered.

The Motion to Confirm the Amended Plan is granted.

The debtor, Elizabeth Micaller Cruz ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for a lump sum payment of \$50,000 to pay off all claims in the case. Amended Plan, Dckt. 49. 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 April 14, 2020. Dckt. 51. Trustee opposes confirmation on the following grounds:

1. Debtor has proposed a plan with a duration of 1 month. The case was filed on 5/21/2019 and converted on 7/31/2020. The plan, which is the subject of this motion, by its terms should have completed in 8/2019. However, this plan wasn't even filed until 3/12/2020, the confirmation hearing won't be heard until 4/28/2020 and if granted, the order won't likely be entered until 5/2020 which is when the Trustee will

finally be able to disburse to creditors.

2. According to the Nonstandard Provisions in Section 7.01, the Debtor will make a single payment of \$50,000 on or before November 30, 2019. While the Debtor did make that payment, she has also paid in additional amounts on a monthly basis. The total paid into the plan to date is \$54,440.00.

DISCUSSION

While the Trustee's grounds for opposition have merit, the Trustee also notes these grounds can be addressed in the order confirming the plan by clarifying (1) the plan term is 10 months, and (2) the amount paid into the plan is \$54,440.00.

With the added clarifying language, the Amended Plan complies 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, Elizabeth Micaller Cruz ("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 March 12, 2020, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, with language clarifying (1) the plan term is 10 months, and (2) the amount paid into the plan is \$54,440.00, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Final Ruling: No appearance at the April 28, 2020, hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on March 10, 2020. By the court's calculation, 49 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of Chrysler Capital ("Creditor") is granted, and Creditor's secured claim is determined to have a value of \$15,000.00.

The Motion filed by Angela Rusfeldt ("Debtor") to value the secured claim of Chrysler Capital ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 73. Debtor is the owner of a 2016 Jeep Cherokee ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$15,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on June 26, 2016, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$18,057.02. Proof of Claim, No. 2. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of \$15,000.00,

the value of the collateral. See 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion to Value Collateral and Secured Claim filed by Angela Rusfeldt ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Chrysler Capital ("Creditor") secured by an asset described as 2016 Jeep Cherokee ("Vehicle") is determined to be a secured claim in the amount of \$15,000.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$15,000.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

Final Ruling: No appearance at the April 28, 2020, hearing is required.

Local Rule 9014-1(f)(2) Objection-Hearing Not Required.

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

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

Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion. The defaults of the non-responding parties in interest are entered.

The Objection to Confirmation of Plan is overruled.
--

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

- A. The plan does not provide equal monthly payments on creditor Southern Cascades Finance Corporation's claim.
- B. Debtor's 2018 tax refund from 2018 shows a \$8,493 refund. Trustee requests any confirmed plan clarify future refunds over \$2,000 be paid into the plan.

MARCH HEARING AND SUPPLEMENTAL PLEADINGS

At the March 10, 2020, hearing the parties requested a continuance and briefing schedule to address issues of contention. Dckt. 33.

Thereafter, the Trustee filed a Status Report indicating that his opposition has been addressed via a mutually agreeable form of confirmation order. Dckt. 36. The Debtor filed a Response concurring. Dckt. 38.

DISCUSSION

With the added language in the confirmation order proposed by the parties, the Plan does comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is overruled, and the Plan is confirmed.

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

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

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

IT IS ORDERED that the Objection is overruled, and Eric Keith Owens's ("Debtor") Chapter 13 Plan filed on January 2, 2020, is confirmed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Final Ruling: No appearance at the April 28, 2020, hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on January 29, 2020. By the court's calculation, 41 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).

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

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

The debtor, Anthony David Morrison and Lisa-Anne Marshall Morrison ("Debtor"), seek confirmation of the Amended Plan. The Amended Plan provides for \$3,920 paid through January 2020, and payments of \$980 thereafter. Amended Plan, Dckt. 42. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on February 25, 2020. Dckt. 58. Trustee opposes confirmation on the following grounds:

1. The plan relies on valuing two secured claims held by Travis Credit Union.
2. Trustee disputes the use of the flat attorney fee unless services for stay relief and lien avoidance are included.

MARCH HEARING AND SUBSEQUENT FILINGS

At the March hearing a continuance was granted to allow Debtor to stipulate with Travis Credit Union regarding the value of its two secured claims. Dckt. 69.

Thereafter, Stipulations were filed, and the court issued orders valuing the secured claims. Dckts. 80-83.

However, the claims were valued several thousand dollars above what the plan contemplated (\$11,500 and \$21,500 whereas the plan proposed \$7,500 and \$15,000 (Plan, Dckt. 42)).

DISCUSSION

Given the stipulated amounts of Travis Credit Union's secured claims are roughly \$10,500.00 greater than anticipated, the plan is no longer feasible and is not confirmable. 11 U.S.C. § 1325(a)(6).

The Motion is denied.

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Anthony David Morrison and Lisa-Anne Marshall Morrison ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

Final Ruling: No appearance at the April 28, 2020, hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, the Chapter 13 Trustee, and the US Trustee on April 1, 2020. By the court's calculation, 27 days' notice was provided. 42 days' notice is required. FED. R. BANKR. P. 2002(b); LOCAL BANKR. R. 3015-1(d)(1).

The Objection To Confirmation 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 Objection is sustained, and the proposed Chapter 13 Plan is not confirmed..
--

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Subsequent to the filing of this Objection, Debtor filed an Amended/Modified Plan and corresponding Motion to Confirm on April 21, 2020. Dckts. 22, 24. Filing a new plan is a de facto withdrawal of the pending plan. 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 Confirmation the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

Final Ruling: No appearance at the April 28, 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 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 18, 2020. By the court's calculation, 41 days' notice was provided. 42 days' notice is required. FED. R. BANKR. P. 2002(b); 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 denied as moot.
--

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Subsequent to the filing of this Motion, the debtor, Tammy Lou Potter-Goddard and Betty Ann Potter-Goddard ("Debtor"), filed a new Amended Plan on April 16, 2020. Dckt. 128. Filing a new plan is a de facto withdrawal of the pending plan. The Motion to Confirm the Amended Plan is denied as moot, and the plan is not confirmed.

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Tammy Lou Potter-Goddard and Betty Ann Potter-Goddard ("Debtor"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

31. [20-20761](#)-C-13 DAVID/ANNA BUSH
[DPC-1](#) Thomas Amberg

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P CUSICK
3-17-20 [[13](#)]

Final Ruling: No appearance at the April 28, 2020, hearing is required.

The Chapter 13 Trustee, David Cusick (the "Trustee"), having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Objection to Confirmation was dismissed without prejudice, the matter is removed from the calendar, and the Chapter 13 Plan filed on February 10, 2020, is confirmed.**

Counsel for the debtor, David Scott Bush and Anna Elizabeth Bush ("Debtor") shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Trustee for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

Final Ruling: No appearance at the April 28, 2020, hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 27, 2020. By the court's calculation, 61 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, Patricia Sittinger ("Debtor") has provided evidence in support of confirmation. No opposition to the Motion has been filed by the Chapter 13 Trustee, David Cusick ("Trustee"), or by creditors. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Patricia Sittinger ("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 27, 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.