UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

June 14, 2022 at 2:00 p.m.

1.	**22-21264-E-13** **MS-1**	**JEREMY WYGAL** **Mark Shmorgon**	**MOTION TO EXTEND AUTOMATIC STAY** **5-19-22 [9]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on May 19, 2022. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

The Motion to Extend the Automatic Stay is granted.

Jeremy Wygal ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition

pending in the past year. Debtor's prior bankruptcy case (No. 21-22925) was dismissed on April 24, 2022, after Debtor failed to make plan payments. *See* Order, Bankr. E.D. Cal. No. 21-22925, Dckt. 37, April 24, 2022. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because Debtor had a temporary reduction in hours at work and was unable to keep up with his payments.

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

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

A. Why was the previous plan filed?

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

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

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

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

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

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

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

IT IS ORDERED that the Motion is granted, and the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes and parties, unless terminated by operation of law or further order of this court.

2. 22-21264-E-13 MS-2 JEREMY WYGAL Mark Shmorgon MOTION TO VALUE COLLATERAL OF CONSUMER PORTFOLIO SERVICES 5-19-22 [13]

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 May 19, 2022. By the court's calculation, 26 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 Consumer Portfolio Services ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $19,479.00.

The Motion filed by Jeremy Wygal ("Debtor") to value the secured claim of Consumer Portfolio Services ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 15. Debtor is the owner of a 2019 Kia Forte Sedan 4D ("Vehicle"). Debtor seeks to value the Vehicle at a

replacement value of $19,479.00 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 December 20, 2018, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $21,701.59. Declaration, Dckt. 15. 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 $19,479.00, 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 an order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Value Collateral and Secured Claim filed by Jeremy Wygal ("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 Consumer Portfolio Services ("Creditor") secured by an asset described as 2019 Kia Forte Sedan 4D ("Vehicle") is determined to be a secured claim in the amount of $19,479.00, 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 $19,479.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

3.	**21-23889-E-13** **EJS-1**	**SHARILYNN BONNARD** **Eric Schwab**	**MOTION TO CONFIRM PLAN** **5-3-22 [40]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 3, 2022. By the court's calculation,42 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, Sharilynn Ann Bonnard ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for $7,144.63 total from December 2021 through January 2022, then $4,132.00 per month from February 2022 through November 2026. Amended Plan, Dckt. 44. 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 May 23, 2022. Dckt. 48. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor is delinquent in plan payments.

DISCUSSION

Delinquency

The Chapter 13 Trustee asserts that Debtor is $1,540.11 delinquent in plan payments, which

represents less than half of one month of the $4,132.00 plan payment. Before the hearing, another plan payment will be due. According to the Chapter 13 Trustee, the Plan in § 2.01 calls for payments to be received by the Chapter 13 Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Sharilynn Ann Bonnard ("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.

4. **22-20233-E-13 JOS-3** | **SEVERO SIMUNDO** **Jeanne Serrano** | **CONTINUED MOTION TO CONFIRM PLAN** **4-19-22 [32]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 19, 2022. 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 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 granted.~~

The debtor, Severo Solilap Simundo ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for monthly plan payments of $2,136.60 for a period of sixty (60) months, and a 100% dividend to unsecured claims totaling $63,145.87. Amended Plan, Dckt. 34. 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 May 18, 2022. Dckt. 38. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor is delinquent in plan payments.

B. Debtor has not filed supplemental Schedules I and J to show ability to make plan payments.

The court notes Amended Schedule J was filed on June 1, 2022 to indicate a monthly net

income of $2,150.03. Dckt. 41. Plan payments are in the amount of $2,136.60. Therefore, Debtor now appears to have sufficient monthly income.

DISCUSSION

Delinquency

The Chapter 13 Trustee asserts that Debtor is $1,909.80 delinquent in plan payments, which represents one month of the $2,136.60 plan payment. Before the hearing, another plan payment will be due. According to the Chapter 13 Trustee, the Plan in § 2.01 calls for payments to be received by the Chapter 13 Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Debtor's counsel filed a response arguing that the arrearage had been cured. Response, Dckt. 42. No evidence of such cure has been provided.

At the hearing, the Trustee reported that the Debtor is still delinquent in the approximate amount of $1,840.41. The Trustee reported that the last payment received was May 27, 2022 in the amount of $2,205.99.

The Trustee agreed to a continuance to allow Debtor to address the delinquency.

June 14, 2022 Hearing

On June 9, 2022, Debtor filed a Declaration testifying as to payments made on the Plan, stating Debtor is not only current, but has modestly over funded the Plan. Dckt. 44.

At the hearing, **xxxxxxx**

~~The proposed Second Amended Chapter 13 Plan complies with 11 U.S.C. § 1322, and § 1325, the Motion is granted 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 Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Severo Solilap Simundo ("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 Second Amended Chapter 13 Plan filed on April 19, 2022, 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.~~

5. 22-20412-E-13 CLH-2 — JAMES FRANTZ — Charles Hastings — MOTION TO CONFIRM PLAN — 5-5-22 [34]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 5, 2022. By the court's calculation, 40 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the 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, James Everett Frantz ("Debtor") seeks confirmation of the Chapter 13 Plan. The Plan provides for monthly plan payments of $795.00 for sixty (60) months, and a 0% dividend to unsecured claims for a total of $0.00. Additionally, Debtor's attorney shall be paid $4,000.00 through the Plan. Plan, Dckt. 37. 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 May 23, 2022. Dckt. 40. Trustee opposes confirmation of the Plan on the basis that:

A. The Debtor is delinquent in plan payments.

B. The Debtor's plan may fail Chapter 7 liquidation analysis under 11 U.S.C. §1325(a)(4).

C. The Trustee does not know what the Debtor's attorney is to be paid or how he expects to be paid.

DISCUSSION

Delinquency

The Chapter 13 Trustee asserts that Debtor is $795.00 delinquent in plan payments, which represents one month of the $795.00 plan payment. Before the hearing, another plan payment will be due. According to the Chapter 13 Trustee, the Plan in § 2.01 calls for payments to be received by the Chapter 13 Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Debtor Fails Liquidation Analysis

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor's plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). The Chapter 13 Trustee states that Debtor has reported non-exempt equity in the amount of $7,975.00. Debtor, however, is proposing a zero percent dividend to unsecured claims. Debtor has not explained how, under the proposed plan and the schedules filed under penalty of perjury, the unsecured claimants are entitled to a zero percent dividend when there may be upward of $7,975.00 in non-exempt assets.

Failure to Afford Plan Payment

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Trustee states they do not know what the Debtor's attorney is to be paid or how he expects to be paid. Debtor's attorney has not indicated whether they will opt-in to the "No Look Fees" allowed under Local Bankruptcy Rule 2016-1(c) or if Debtor's attorney will seek court approval through Motion in accordance with 11 U.S.C. §§ 329, 330. Debtor's Plan indicates attorney received $0.00 prior to filing the case and $4,000.00 will be paid through the Plan. Additionally, § 3.06 of the Plan states monthly administrative expenses in the amount of $715.50. It is not clear to the court whether these expenses are to pay Debtor's attorney. Debtor's Rights and Responsibilities and Disclosure of Compensation of Attorney reflect a total of $4,000.00, which would be consistent with Local Bankruptcy Rule 2016--1(c). However, the Plan should be amended to clarify how the attorney will be paid. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

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

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

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

The Motion to Confirm the Chapter 13 Plan filed by the debtor, James

Everett Frantz ("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.

6.	**22-20412-E-13** **DPC-1**	**JAMES FRANTZ** **Charles Hastings**	**CONTINUED MOTION TO DISMISS CASE** **4-27-22 [30]**

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

Local Rule 9014-1(f)(1) Motion—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 April 27, 2022. By the court's calculation, 35 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). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss is ~~granted and the case is dismissed~~

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. the debtor, James Everett Frantz ("Debtor"), is delinquent in plan payments.

2. Debtor has not served their Plan filed on March 30, 2022 on all interested parties.

DEBTOR'S RESPONSE

Debtor filed a Response on May 12, 2022. Dckt. 39. Debtor states the delinquency will be cured prior to the hearing date and they served the Plan and Motion to Confirm on all parties.

Debtor requests the court continue Trustee's Motion to June 14, 2022, the date of the Hearing on the Motion to Confirm Plan.

DISCUSSION

Delinquent

Debtor is $1,590.00 delinquent in plan payments, which represents multiple months of the $795.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately for Debtor, a promise to pay is not evidence that resolves the Motion.

June 14, 2022 Hearing

At the hearing, XXXXXXXXXX

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

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

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

~~**IT IS ORDERED** that the Motion to Dismiss is granted, and the case is dismissed.~~

7. **22-20813-E-13 DPC-1** **JAMES JONES** **Pro Se** **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 5-19-22 [19]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor (*pro se*) on May 19, 2022. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. Debtor failed to appear at the First Meeting of Creditors held on May 12, 2022.

B. Debtor's plan may not be their best efforts.

C. Trustee is unclear whether or not Debtor can make plan payments due to deficiencies with Chapter 13 documents filed.

D. Debtor has failed to provide business documents.

E. Debtor appears to be a frequent filer.

F. Plan payment coming due

DISCUSSION

Trustee's objections are well-taken.

Failure to Appear at 341 Meeting

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

Not Best Effort

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

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

Debtor has failed to completely and accurately complete the Form 122C-1.

Failure to Afford Plan Payment / Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Chapter 13 documents are incomplete. Trustee is uncertain if any information contained in the Petition, Schedules, and Plan is accurate or complete. Trustee points the court to the following discrepancies:

> a. Class 2, of the Plan, fails to list the Solano County Tax Treasure and The Estate of Josic Starps, (DN 14, Page 3-4), where these creditors are listed on Schedule D of the petition, (DN 12, Page 15.) and they also do not appear to be included on the Schedule J.
>
> b. Section 3.12, of the Plan, states $47,000 in priority Debts, (Page 5). The Debtor failed to list any creditors on Schedule E/F, (DN 12, Pages 18-22) that would appear to be priority debts and the Plan calls for payments of $1,000.00 for forty-six (46) months, (Page 1), which would not be sufficient to pay these priority debt(s) if they do exist.

c. Section 3.14, of the Plan, is silent as to total approximate amount to unsecured creditors not entitled to priority.

d. The Debtor failed to provide income information in Statement of Financial Affairs (SOFA), Questions #4 and #5, (DN 12, Page 34 & 35). Schedule I shows the Debtor receives $1,400.00 in support payments, $1,841.00 in Social Security, $1,200.00 in pension or retirement, and $865.00 in VA Benefits, (DN 12, Page29, #8c-8h). The SOFA is silent as to how much income has been received and from which sources over the last three years.

e. The Debtor failed to identify all creditors in Schedules D, E/F and G. The Verification of Master Address List shows: A Townsend Concrete and Brightleaf Textile, (DN 4, Page 2.) Schedules D, E/F and G do not reflect any creditors, except Solano County Tax Treasurer and the Estate of Josic Starps, and the Trustee is not certain if the Debtor has listed all creditors in these Schedules, (DN 12, Pages 15-26), and if the Matrix has correctly identified all creditors, especially since Josic Starps is not listed.

f. The Statement of Financial Affairs shows the Debtor as a sole proprietor for Westcoast Restoration Services, (DN 12, Page 44, #27.) Schedule I shows the Debtor employed by West Coast Custom RFT, (DN 12, Page 28, #1), with no wage income or business income identified, (#2 & #8a). The Trustee in not certain that Schedule I has been completed accurately.

Objection, Dckt. 19 at 2.

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

Failure to File Documents Related to Business

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

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

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

Frequent Filer

Trustee indicates nineteen (19) prior cases filed over the past thirty-three (33) years. These

include cases in the Northern District of California and the District of Georgia, in addition to the Eastern District of California.

Payment Coming Due

Trustee indicates a Plan payment comes due May 25, 2022. Trustee has not indicated whether this payment was made.

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 an order substantially in the following form holding that:

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

8. **22-20328-E-13 PGM-1** **MAXIMILIAN ROSA**
Peter Macaluso

CONTINUED MOTION TO VALUE COLLATERAL OF TRUIST BANK
3-1-22 [14]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, Truist Bank, and Office of the United States Trustee on March 1, 2022. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of Truist Bank ("Creditor") is xxxxxxxxxxxxxxxx

The Motion filed by Maximilian Emmett Rosa ("Debtor") to value the secured claim of Truist Bank ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 16. Debtor is the owner of a 2016 Toyota Corolla ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $9,600.00 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).

TRUSTEE'S RESPONSE

The Chapter 13 Trustee, David P. Cusick ("Trustee") filed a Response to Debtor's Motion to Value Collateral on March 21, 2022. See Dckt. 21. Trustee objects on the following grounds:

A. Debtor's Motion fails to state legal grounds with particularity.

B. Debtor's valuation of the collateral conflicts with the plan, which states, "The Class 2 claim of Regional Acpt Corp is disputed and not subject to payment as the Debtor received a 1099-C, cancelling of debt in December 2021." Plan, Dckt. 3 at 7.

DISCUSSION

Request For Relief Not Stated With Particularity

Here, Debtor does not state the legal basis for the request relief required under the Local Rules and Federal Rules of Bankruptcy Procedure. Debtor merely states facts and a requests for their Motion to be granted.

The Supreme Court requires that the motion itself state with particularity the grounds upon which the relief is requested. FED. R. BANKR. P. 9013. That "state with particularity" requirement is not unique to the Bankruptcy Rules and is also found in Federal Rule of Civil Procedure 7(b).

While it may appear to be "obvious" that the relief is sought pursuant to 11 U.S.C. § 506(a), it is even more obvious that such could be simply stated in the Motion. If the court were to state the legal grounds for Debtor, then Debtor's counsel and that counsel's staff might conclude that there is a range of motions in which the legal grounds "don't really matter."

The Trustee also directs the court to Debtor's Plan which states that no debt exists. If there is no debt, then there is no secured claim to be valued.

ADDITIONAL PROVISIONS:

The Class 2 claim of Regional Acpt Corp is disputed and not subject to payment as the Debtor received a 1099-C,

Plan, Additional Provisions; Dckt. 3. Taken at Debtor's word, there is no claim to value.

In sum, citing the legal basis supporting one's position for relief is required and failure to do so is cause for denial, without prejudice.

At the April 12, 2022 hearing, the Debtor and Chapter 13 Trustee concurred with the court continuing the hearing to allow Debtor to address this claim and determine whether there is a debt owing secured by the vehicle or whether there is no claim.

June 14, 2022

At the hearing xxxxxxxxxxxxxx

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

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

The Motion to Value Collateral and Secured Claim filed by Maximilian Emmett Rosa ("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 Value Collateral and Secured Claim of Truist Bank ("Creditor") is xxxxxxxxxxxxxxxx**.**

9.	**22-20328-E-13** **DPC-1**	**MAXIMILIAN ROSA** **Peter Macaluso**	**CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **3-22-22 [23]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on March 22, 2022. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is xxxxxxxxxxxxx

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

A. The Debtor admitted at the continued First Meeting of Creditors held on March 17, 2022, that he is uncertain if 2019 tax returns have been filed. The Internal Revenue Service has filed a Proof of Claim reflecting no tax returns were filed for 2019, as it estimated $3,524.55 is owed as an unsecured priority.

B. Debtor's Plan calls for a Motion to Value Collateral being filed for

Regional Acpt Corp, listed in Class 2B, but also states the treatment for the value of Creditor's interest and the monthly dividend as, "see add'l provisions." The Additional Provisions states, "The Class 2 claim of Reginal Acpt Corp is disputed and not subject to payment as the Debtor received a 1099-C, cancellation of debt in December 2021." Debtor has filed a Motion to Value Collateral, which is set for hearing on April 5, 2022. As the Trustee understands the plan, the claim is not to be paid whether or not the motion to value is granted. The Trustee believes Debtor can afford the payments and comply with the Plan.

C. Debtor's first Plan payment of $100.00 will be due on March 25, 2022, which is on or before the hearing on this Objection.

DISCUSSION

Trustee's objections are well-taken.

Failure to File Tax Returns

Debtor admitted at the Meeting of Creditors that the federal income tax return for the 2019 tax year has not been filed still. Filing of the return is required. 11 U.S.C. §§ 1308, 1325(a)(9). Failure to file a tax return is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

The Trustee reported that a copy of the return has been provided and the Internal Revenue Service has amended the Proof of Claim.

Debtor's Reliance on Motion to Value Secured Claim

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of Regional Acpt Corp. Debtor has filed a Motion to Value the Secured Claim of Regional Acpt Corp, which was heard on April 5, 2022. However, the claim is not to be paid whether or not the Motion to Value is granted. Therefore the Trustee believes Debtor can afford the payments and comply with the Plan pursuant to, 11 U.S.C. § 1325(a)(6).

Plan Payment Coming Due

Trustee notes that Debtor's first Plan payment of $100.00 is due on March 25, 2022, prior to the hearing on the Objection.

The Trustee reported that this matter should be continued to allow the Debtor to prosecute the Motion to Value Secured Claim. The Debtor concurred.

June 14, 2022

At the hearing xxxxxxxxxxxxx.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Confirmation filed by David Cusick, the Chapter 13 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 Plan is xxxxxxxxxxxxxxx**.**

10. 21-23261-E-13 PGM-2 — FLORA BROUGHTON — Peter Macaluso — CONTINUED MOTION TO CONFIRM PLAN — 2-3-22 [52]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 3, 2022. By the court's calculation, 40 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is XXXXX

The debtor, Flora Elaine Broughton ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for Plan payments of $8,220.00 per month will commence March 25, 2022 for 55 months. The balance of monies on hand with the Chapter 13 Trustee as of February 2, 2022 is

$6,252.36, Trustee is to disburse an on-going mortgage payments to Class 1 creditor PHH for February 2022. Class 1 Mortgage lender, PHH was paid directly post-petition, for October, November, December and January 2022. Class 2 Creditor, Franklin/Bosco - line of creditor mature June 2021, 180 months from May 2006. Amended Plan, Dckt. 56. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S NON-OPPOSITION

On February 22, 2022, David Cusick, Chapter 13 Trustee, filed a Non-Opposition to Debtor's Motion to Confirm Amended Plan. Dckt. 63.

CREDITOR'S OPPOSITION

Bosco Credit LLC ("Creditor") holding a secured claim filed an Opposition on February 25, 2022. Dckt. 66. Creditor opposes confirmation of the Plan on the basis that:

A. Creditor holds a lien on the Debtor's principal residence. Debtor cannot modify Creditor's lien pursuant to § 1322(b)(2). Further, Debtor is attempting to utilize the exception of § 1322(c)(2) by classifying the claim as a matured loan. Debtor states the loan is set to mature in June 2021, however, this is incorrect as the loan is set to mature in June 20, 2031. Additionally, Debtor proposes a 3.00% interest rate rather than the 12.750% currently existing.

B. The proposed Plan does not set forth a reasonable schedule and time period for the payment of the arrearage owed to Secured Creditor.

C. While Debtor's amended Schedule I reflects a monthly income of $10,721.71, half of that is from family contribution. Feasibility concerns aside, Debtor must provide for both repayment of the arrearage together with the correct ongoing monthly payment amount as follows: $184,721.16 divided by 60 months = $3,078.68 plus the current monthly payment of $2,321.69 for total monthly amount of $5,400.37.

For these Opposition grounds, no evidence is provided to the court, but just the argument of counsel that such facts exist.

Debtor's Reply

On March 7, 2022, Debtor filed a reply stating:

1. Creditor is properly classified as class 2 because of the "publication" on October 7, 2021 and charges of $1,514.00. Dckt. 68. The Notice of Sale being published calls for the acceleration of the terms which result in the allowance of a class 2 claim despite the regular note expiration on June 30, 2031.

2. Debtor is requesting a loan modification and does not oppose this

Motion be continued to allow the processing of a loan modification.

Dckt. 68.

CREDITOR'S SUPPLEMENTAL BRIEF

On May 24, 2022, Creditor filed a supplemental briefing in support of their objection. Dckt. 78. Creditor states they now only object on the following grounds:

A. The amendment impermissibly modifies a secured creditor's rights.

B. The creditor made no election to accelerate the debt.

C. A claim secured only by a security interest in real property that is the debtor's principal residence is protected from modification.

D. The last planned payment will occur prior to the last payment due under the original payment schedule.

E. The proposed interest rate is unacceptable pursuant to *Till*.

DISCUSSION

Modification of an Obligation Secured Only by Principal Residence

Creditor argues that Debtor's Plan was not filed in good faith and is an improper modification of a claim secured only by a security interest in real property that is Debtor's principal residence. Creditor has filed a Proof of Claim stating a secured claim in the amount of $255,340.79, secured by a second priority deed of trust against the property commonly known as 5505 Jilson Way, Elk Grove, CA 95757. Debtor's Schedules indicate that this is Debtor's primary residence.

In the Reply to the Objection, Debtor states that "Based on the 'publication' . . .the Notice of Sale being published calls for the acceleration of the terms which results in the allowance of a class 2 claim. . ." The court adding to this short reply and first cites to the anti-modification provision of 11 U.S.C. § 1322(b)(2) which states that a plan may:

> (2) modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims; . . .

Then in 11 U.S.C. § 1322(c)(2) [emphasis added] what had been given the creditor of a claim secured by a principal residence in 11 U.S.C. § 1322(b)(2) is whittled back by Congress, which provision states:

> (c) Notwithstanding subsection (b)(2) and applicable nonbankruptcy law—

> (1) a default with respect to, or that gave rise to, a lien on the debtor's principal residence may be cured under paragraph (3) or (5) of subsection (b) until such residence is sold at a foreclosure sale that is conducted in accordance with applicable nonbankruptcy law; and
>
> (2) in a case in which the **last payment on the original payment schedule for a claim** secured only by a security interest in real property that is the **debtor's principal residence** is **due before the date on which the final payment under the plan is due,** the plan may provide for the payment of the claim as modified pursuant to section 1325(a)(5) of this title. . . .

Congress provides in 11 U.S.C. § 1325(a)(5)(B)(ii) that the Plan may provide for treatment of the secured claim by payment of "[t]he value, as of the effective date of the plan, of property to be distributed under the plan on account of such claim is not less than the allowed amount of such claim; . . . ."

Here, the Plan clearly provides for the payment of Creditor's secured claim, in full, over the 60 months of the Plan. In the Reply, Debtor makes reference to a Notice of Sale being published on October 7, 2021. Reply ¶ 1; Dckt. 68. Reference is made to a charge for that by Creditor. In the October 21, 2021 filed Notice of Postpetition Mortgage Fees, Expenses, and Charges for Proof fo Claim 4-1 filed by Creditor, it states a "Publication " cost incurred on October 7, 2021 in the amount of $1,514.00.

This October 7, 2021 "Publication" occurred post-petition. Since this was post-petition, it had to be to continue some pre-petition set date and not to take action against the Debtor or property of the Bankruptcy Estate in this case. 11 U.S.C. § 362(a). On the Attachment to Creditor's Proof of Claim 4-1, there is a $225.00 posting cost and $98.00 recording cost incurred August 12, 2021. POC 4-1, p. 11. If this is for recording a Notice of Default under California law, then the ninety (90) days of the Notice would expire on or about November 12, 2021.

California law provides in California Civil Code § 2924(e) that the default in an obligation secured by a deed of trust may be cured at "[a]ny time within the period commencing with the date of recordation of the notice of default until five business days prior to the date of sale set forth in the initial recorded notice of sale." Thus, the assertion is that since the Notice of Default was given by Creditor, then a foreclosure sale date set and no cure having been made prior to five days before the initial notice of sale date, then Creditors claim is an obligation that was due in full on filing and is one that is due in full prior to the expiration of the sixty (60) month Plan term.

Accelerated Debts

An acceleration clause requires a debtor to repay the entire remainder of the loan amount in the event of a default.

Debtor's Reply dated March 7, 2022 (Dckt. 68) states Creditor's Notice of Sale being published calls for the acceleration of the terms. Debtor provides no legal grounds for why a Notice of Sale should be treated as an acceleration of the terms. Additionally, Creditor states they made no election to accelerate the debt. Even if Debtor were to provide evidence that the Notice of Sale acts as an acceleration Debtor has provided no legal grounds evidencing why they are allowed to modify loan terms and treat Creditor as a class 2 claim.

Even if Debtor were to provide such evidence, courts have generally upheld that when Congress enacted 11 U.S.C. § 1322(b)(5) and "empowered Chapter 13 debtors to 'cure defaults,'" they intended to allow mortgagors to decelerate their mortgage and reinstate the original payment schedule. *In re Taddeo*, 685 F.2d 24, 26-27 (2d Cir. 1982). This theory has been consistently upheld and seen throughout circuits including the Ninth Circuit Court of Appeals. *See In re Seidel*, 752 F.2d 1382, 1386 (9th Cir. 1985) ("When a debt has been accelerated, "cure" therefore results in the reinstatement of the original payment terms of the debt."); *In re Metz*, 820 F.2d 1495, 1497 (9th Cir. 1987) ("Chapter 13 allows a mortgagor debtor to cure a prepetition acceleration of home mortgage debt triggered by default.").

Additionally, the Ninth Circuit has upheld that a loan modification of a pre-petition accelerated debt is prohibited under 11 U.S.C. § 1322(b)(2). *Metz*, 820 F.2d at 1497. Although modification is prohibited, the Ninth Circuit found a chapter 13 plan is still permissible to cure a claim if it reinstates the original debt after correcting arrearage. *Id.* (citing *Seidel*, 752 F.2d at 1386). In effect, pursuant to 11 U.S.C. § 1322(b)(5), curing a default restores matters to the status quo and nullifies pre-petition consequences of default. *In re Entz-White Lumber & Supply*, Inc., 850 F.2d 1338, 1340 (9th Cir. 1988) (citing *Taddeo*, 685 F.2d at 26-27; *In re Clark*, 738 F.2d 869, 872 (7th Cir. 1984); *Frazer v. Drummond* (*In re Frazer*), 377 B.R. 621, 630 (B.A.P. 9th Cir. 2007); *Casa Blanca Broject Lenders, L.P. v. City Commerce Bank* (*In re Casa Blanca Project Lenders, L.P.*), 196 B.R. 140, 143 (9th Cir. BAP 1996).

As such, if a creditor were to enforce an acceleration clause prior to a debtor's filing of the bankruptcy petition, a permissive chapter 13 plan under 11 U.S.C. § 1322(b)(5) would cure a debtor's default and reinstate the original payment schedule.

The aforementioned cases, however, distinguish from the case at hand. In the cases, debtors elected to use 11 U.S.C. § 1322(b)(5) to "decelerate" their debt and work to cure their default while continuing with the original payment terms. Here, Debtor is seeking to use Creditor's supposed "acceleration" (which neither has provided evidence of) to treat Creditor as a class 2 claim.

Pursuant to the Plan, Class 2 claims are all secured claims modified by the plan, or have matured or will mature before the plan is completed. Under § 3.08 of the plan, however, Debtor is prohibited from modifying the rights of a holder of a claim secured only by Debtor's principal residence, except as permitted by 11 U.S.C. § 1322(c). 11 U.S.C. § 1325(c)(2) allows modification of these claims if the last payment is due before the date on which final payment under the plan is due.

One could theorize that a chapter 13 debtor, after a creditor seeks a pre-petition acceleration, may not seek to nullify pre-petition default consequences. This would keep the pre-petition default consequences in place. Under an acceleration action, this would bring the "final payment" (now a lump sum payment) due at whatever date the acceleration date is. As the acceleration dates are typically only a month or so out, this new date would bring the final payment due before the end of the plan.

Acceleration Based On Notice of Sale

Debtor's Notice of Sale has not been shown to qualify as a Class 2 exception under 11 U.S.C. § 1322(c)(1) for the same reasons as stated above. Even if the Notice of Sale constituted an "acceleration," original loan terms cannot be modified. Debtor would be able to cure their default and continue with the original payment agreement.

Looking to the plain language of 11 U.S.C. § 1322(c)(2), it states the following with respect modifying a debt secured by the Debtor's primary residence (emphasis added):

> (c) Notwithstanding subsection (b)(2) [prohibition on modification of such loan] and applicable nonbankruptcy law—
> . . .
> (2) in a case **in which the last payment on the original payment schedule** for a claim secured only by a security interest in real property that is the debtor's principal residence **is due before the date on which the final payment under the plan is due**, the plan may provide for the payment of the claim as modified pursuant to section 1325(a)(5) of this title.

The statute clearly directs the court to determine the date of the last payment on the original payment schedule (which this court interprets to mean the contract as of the time of filing, and not an original of a loan that was modified prepetition) and whether that date is after the term of the Plan.

When read in context with 11 U.S.C. § 1322(c)(1) which gives a debtor the right to cure any default through a plan prior to foreclosure sale, a "mere" inability to cure under state law does not equate to the original terms of the loan making the last payment due prior to the end of the Plan term.

Proof of Claim Filed by Creditor

As discussed above, Creditor has filed Proof of Claim 4-1, stating that the amount of the Claim is ($255,340.79). Further, that the amount of the pre-petition arrearage that is asserted is ($184,721.16). Creditor has not asserted that the obligation has been accelerated and the entire balance is due in full.

Interest Rate

Creditor objects to the confirmation of the Plan on the basis that the Plan calls for adjusting the interest rate on its loan with Debtor to 3.00%. Creditor's claim is secured by a security interest in Creditor's principle residence. Creditor argues that this interest rate is outside the limits authorized by the Supreme Court in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). In *Till*, a plurality of the Court supported the "formula approach" for fixing post-petition interest rates. *Id.* Courts in this district have interpreted *Till* to require the use of the formula approach. *See In re Cachu*, 321 B.R. 716 (Bankr. E.D. Cal. 2005); *see also Bank of Montreal v. Official Comm. of Unsecured Creditors (In re American Homepatient, Inc.)*, 420 F.3d 559, 566 (6th Cir. 2005) (*Till* treated as a decision of the Court). Even before *Till*, the Ninth Circuit had a preference for the formula approach. *See Cachu*, 321 B.R. at 719 (citing *In re Fowler*, 903 F.2d 694 (9th Cir. 1990)).

The court agrees with the court in *Cachu* that the correct valuation of the interest rate if the loan were modifiable is the prime rate in effect at the commencement of this case plus a risk adjustment. Because the creditor has only identified risk factors common to every bankruptcy case, the court would fix the interest rate as the prime rate in effect at the commencement of the case, 3.25%, plus a 1.50% risk adjustment, for a 4.75% interest rate if Debtor could modify the loan and pay it off during the term of the Plan.

However, pursuant to 11 U.S.C. § 1322(b)(2), Debtor cannot modify the interest rate of a

claim secured only by a security interest in real property that is the debtor's principal residence. *In re Clark*, 2010 Bankr. LEXIS 3757 ("[C]onfirmation of a Chapter 13 plan would have constituted an impermissible modification because the plan proposed to alter fundamental aspects of the debtor's obligations, i.e., the nature and rate of interest, and the maturity features of the loan") (citing *In re Coffey*, 52 B.R. 54, 55 (Bankr.D.N.H.1985)). Therefore, the Plan is not confirmable.

RULING
June 14, 2022 Hearing

As the court has addressed above the 11 U.S.C. § 1322(c)(2) exception to the § 1322(b)(2) prohibition on modification of the rights of a creditor on a secured claim for which the collateral is on the Debtor's primary residence is limited to such secured claims where, based on the **original payment schedule on the note**, the final payment on the note would come due before the end of the Chapter 13 plan term.

In Proof of Claim 4-1 Creditor has not asserted that based on the Note the last payment due is before the end of the Plan term in this case. Creditor expressly states a (large) cure amount that is necessary for the pre-petition defaults.

The Deed of Trust attached to Proof of Claim 4-1 states in Definition ¶ (E) that the secured obligation is that under the HELOC Agreement dated May 22, 2006, and the HELOC matures on June 20, 2031. Deed of Trust, p. 1, attached to Proof of Claim 4-1, p. 21 of 41.

The HELOC Agreement provides that the Repayment Period is defined to be the period beginning at the end of the Draw Period. HELOC Agreement, ¶ 1(M), attachment to Proof of Claim 4-1, p. 12 of 41. The date of the HELOC Agreement is May 22, 2006, the Draw Period if 120 months (10 years) and the Repayment Period is 180 Months (15 years). Thus, the Repayment Period ends twenty-five years after April 2006 (assuming the draw period started April 1, 2006). This computes as follow: April 2006 plus ten draw years ends May 2016. Then, the twenty-five year Repayment Period commences April 2016 and ends May 2031.

Though Debtor has the federal right to cure a default as provided in 11 U.S.C. § 1322(c)(1), Debtor does not have the right to modify the obligation for which the Repayment Period does not end until May 2031.

At the hearing, XXXXXXXXXX

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Flora Elaine Broughton ("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 XXXXXXX

FINAL RULINGS

11.	**21-24140-E-13 MS-1**	**TIMOFEY RYZHUK Mark Shmorgon**	**CONTINUED MOTION TO MODIFY PLAN 2-25-22 [22]**

Final Ruling: No appearance at the June 14, 2022 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 25, 2022. By the court's calculation, 46 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). 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, Timofey Ryzhuk ("Debtor") seeks confirmation of the Modified Plan to restructure his secured claims and to deal with overwhelming unsecured debt. Declaration, Dckt. 25. The Modified Plan provides payments of $696.00 for 38 months, and a 0.00 percent dividend to unsecured claims totaling $53,565.07. Modified Plan, Dckt. 24. 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 22, 2022. Dckt. 31. Trustee opposes confirmation of the Plan on the basis that:

A. The plan may not pay unsecured claims what they would receive in the event of liquidation. However, Trustee requests the court to continue the matter for 60-90 days to allow for potential discovery and a claim objection as to creditor U.S. Bank National Association, (Claim #4).

DISCUSSION

Debtor Fails Liquidation Analysis

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor's plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). The Chapter 13 Trustee states that Claim #4 asserts a secured claim of $19,671.84 based on, "All assets described under the contract's security provision," with the basis for perfection. Additionally, a review of Debtor's Schedule of property does show assets including $1,076.29 in cash, accounts, and a security deposit, and $72,500.00 in vehicles and trailers.

Insufficient Information

Debtor has supplied insufficient information relating to the assets to assist the Chapter 13 Trustee in determining the value of the assets. Debtor fails to report the certificates of title for these vehicles attached to the claim, nor any explanation indicating that an exception applies.

At the April 12, 2022 hearing, Debtor and the Chapter 13 Trustee agreed to a continuance for a time period for the prosecution of the objection to claim.

Trustee's Status Report

The Trustee filed a Status Report on June 7, 2022 indicating they no longer oppose the Motion to Modify stating the plan provides "the proof of claim determines the classification subject to the court's disposition of a claim objection." Dckt. 36.

June 14, 2022

The proposed Modified Chapter 13 Plan complies with 11 U.S.C. § 1322, § 1325, and § 1329; the Motion is granted and the Plan is confirmed

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by Timofey Ryzhuk ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> .
>
> **IT IS ORDERED** that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on February 25, 2022, 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.

12. 18-27575-E-13 SS-1 ANA HINMAN Scott Shumaker MOTION TO MODIFY PLAN 5-10-22 [27]

Final Ruling: No appearance at the June 14, 2022 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 10, 2022. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Ana Marie Hinman ("Debtor"), has filed 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 Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on May 25, 2022. Dckt. 33. 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, Ana Marie Hinman ("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 May 10, 2022, 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.