UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

Notice
The court has reorganized the cases, placing all of the Final Rulings in the second part of these Posted Rulings, with the Final Rulings beginning with Item 49.

The court has also reorganized the items for which the tentative rulings are issued, Items 1–48, attempting to first address the items in which short argument is anticipated.

July 17, 2018, at 3:00 p.m.

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1. **18-22301-E-13** **KATISHA BROWN** **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK**
DPC-1 **Candace Brooks** **5-25-18 [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 and Debtor's Attorney on May 25, 2018. By the court's calculation, 32 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.

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

A. Katisha Brown ("Debtor") is delinquent on plan payments, and

B. Debtor failed to appear at the First Meeting of Creditors held on May 24, 2018.

JUNE 26, 2018 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on June 26, 2018. Dckt. 32.

RULING

No subsequent pleadings have been filed for this matter since the June 26, 2018 hearing. The Chapter 13 Trustee's objections are well-taken.

The Chapter 13 Trustee's June 1, 2018 Docket Entry Report states that Debtor and her counsel appeared at the May 31, 2018 continued First Meeting of Creditors and that the Meeting has been concluded. That resolves one of the grounds stated by the Chapter 13 Trustee.

As to the second ground, the Chapter 13 Trustee asserts that Debtor is $368.00 delinquent in plan payments, which represents one month of the $368.00 plan payment. 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 Plan does not comply with 11 U.S.C. § 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 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 the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

2. **18-22520-E-13 SLH-1** | **TINA OLDWEILER** **Seth Hanson** | **MOTION TO VALUE COLLATERAL OF FIRST TECH CREDIT UNION 6-1-18 [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.

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, parties requesting special notice, and Office of the United States Trustee on June 1, 2018. By the court's calculation, 46 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 First Tech Credit Union ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $7,300.00.

The Motion filed by Tina Oldweiler ("Debtor") to value the secured claim of First Tech Credit Union ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2012 Ford Focus ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $7,300.00 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).

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on July 9, 2018. Dckt. 22. The Chapter 13 Trustee states that he does not oppose the Motion and notes that Creditor's claim is provided for in Class 2. He also notes that Creditor filed Proof of Claim No. 1-1 in the secured amount of $7,300.00.

RULING

The lien on the Vehicle's title secures a purchase-money loan incurred on May 15, 2014, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $9,623.84. 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 $7,300.00, 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 Tina Oldweiler ("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 First Tech Credit Union ("Creditor") secured by an asset described as 2012 Ford Focus ("Vehicle") is determined to be a secured claim in the amount of $7,300.00, 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 $7,300.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

3.	**18-22520-E-13** **DPC-1**	**TINA OLDWEILER** **Seth Hanson**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **6-6-18 [18]**

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 June 6, 2018. By the court's calculation, 41 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is overruled.

David Cusick ("the Chapter 13 Trustee") opposes confirmation of the Plan on the basis that it relies upon the court granting a motion to value a claim. A review of Debtor's Plan shows that it relies on the court valuing the secured claim of First Tech Credit Union. That Motion was heard and granted at the July 17, 2018 hearing.

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

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

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

The Objection to the Chapter 13 Plan filed by 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 is overruled, and Tina Oldweiler's ("Debtor") Chapter 13 Plan filed on April 25, 2018, 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.

4. 18-22178-E-13 MC-2 — BLAIRE KNIGHT — Muoi Chea — MOTION TO EMPLOY COLDWELL BANKER KAPPEL & GATEWAY REALTY AS BROKER(S) — 6-25-18 [34]

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the 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, parties requesting special notice, and Office of the United States Trustee on June 25, 2018. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

The Motion to Employ 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 Employ is granted.

Blaire Knight ("Debtor") seeks to employ Coldwell Banker Kappel & Gateway Realty ("Broker") pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Debtor

seeks the employment of Broker to sell real property commonly known as 1900 Danbrook Drive, Unit 111, Sacramento, California ("Property").

Debtor argues that Broker's appointment and retention is necessary to establish a fair market value for the Property and to market and sell it. Debtor proposes to hire Broker in exchange for a 5% commission of the purchase price of a completed sale.

Rose Deadrich, a licensed real estate agent of Coldwell Banker Kappel & Gateway Realty, testifies that she knows the Sacramento real estate market and is ready to list the Property. Ms. Deadrich testifies she and the company do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

CHAPTER 13 TRUSTEE'S NON-OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed a Non-Opposition on July 3, 2018. Dckt. 42. The Chapter 13 Trustee states that he does not oppose hiring a broker and requests that the Motion be granted.

DISCUSSION

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

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

Taking into account all of the relevant factors in connection with the employment and compensation of Broker, considering the declaration demonstrating that Broker does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Coldwell Banker Kappel & Gateway Realty as Broker for the Chapter 13 Estate on the terms and conditions set forth in the Residential Listing Agreement filed as Exhibit A, Dckt. 37. Approval of the commission is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

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

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

The Motion to Employ filed by Blaire Knight ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Employ is granted, and Debtor is authorized to employ Coldwell Banker Kappel & Gateway Realty as Broker for Debtor on the terms and conditions as set forth in the Residential Listing Agreement filed as Exhibit A, Dckt. 37.

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

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

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

5. 14-29505-E-13 JOHN/CAROLIN FUNDERBURG MOTION TO MODIFY PLAN
DJC-7 Diana Cavanaugh 6-2-18 [132]

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 June 2, 2018. By the court's calculation, 45 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is denied.

John Funderburg and Carolin Funderburg ("Debtor") seek confirmation of the Modified Plan because they have removed an automobile payment from their budget, because income has changed, and because expenses have increased. Dckt. 134. The Modified Plan proposes payment of $199,168.77 through forty-two months, waiver of any delinquency, followed by payment of $4,947.00 beginning April 2018 for eighteen months. Dckt. 136. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S AMENDED RESPONSE

David Cusick ("the Chapter 13 Trustee") filed an Amended Response on July 3, 2018. Dckt. 141. At first, he had filed a Non-Opposition, but upon further review after receiving Debtor's 2017 federal tax return and copies of paystubs, the Chapter 13 Trustee believes that more income is available for distribution.

The paystubs reflect monthly earnings of $12,461.20 for one of the debtors, but Schedule J indicates $11,944.73. The paystubs indicate that an increase occurred in April 2018 in hourly wages.

As a second point, the Chapter 13 Trustee believes that Debtor may be overwitholding for taxes because the 2017 tax return indicates Debtor received a refund of $7,695.00. Because the return is undated, the Chapter 13 Trustee is not sure if the refund has been received.

The Chapter 13 Trustee argues that he cannot tell for certain if Debtor has been overwitholding because only the 2017 tax return has been provided.

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 John Funderburg and Carolin Funderburg ("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.

6.	**16-25007-E-13** **BLG-1**	**WILLIE MORRIS AND MONICA TATNEY-MORRIS** **Chad Johnson**	**MOTION TO BORROW** **7-3-18 [20]**

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, parties requesting special notice, and Office of the United States Trustee on July 3, 2018. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The Motion to Incur Debt is denied without prejudice.

Willie Morris and Monica Tatney-Morris ("Debtor") seek permission to purchase an undisclosed vehicle. A review of the attached exhibit shows that it is for a 2017 Nissan Versa with a total purchase price of $30,835.44 and monthly payments of $428.27 over seventy-two months with a 16.70 % fixed interest rate.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on July 10, 2018. Dckt. 25. He notes that the Motion omits details such as the type of vehicle being purchased and an explanation that it is to replace a vehicle that stopped operating. He notes that the deal terms are in the attached exhibit. He also notes that Debtor has not addressed whether the vehicle has been purchased already and whether this motion is for retroactive approval of the purchase.

Second, he argues that without amending the schedules, Debtor does not appear to be able to make the payments of $428.27 while also prosecuting this plan. Finally, the Chapter 13 Trustee is unsure whether the requested relief is in the best interest of the Estate because Debtor has not described whether

the prior vehicle could be repaired or what methods were employed to get a used vehicle with a reasonable interest rate.

DEBTOR'S RESPONSE

Debtor filed a Response on July 11, 2018. Dckt. 28. Debtor states that supplemental declarations have been filed to explain away the Chapter 13 Trustee's concerns, and it includes mention that a modified plan with supporting supplemental schedules will be filed and set for hearing.

The Supplemental Declaration states that the purchase contract has not been signed yet, that the prior truck was breaking down constantly, and that they reviewed online companies that work with bankruptcy debtors to select a vehicle.

DISCUSSION

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." FED. R. BANKR. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

Debtor does not address the reasonableness of incurring debt to purchase a brand new vehicle while seeking the extraordinary relief under Chapter 13 to discharge debts. Debtor claims that one of their current vehicles has stopped working while they need two vehicles to commute to work. According to the vehicle contract, Debtor received $500 for trading in their 2001 Dodge Durango. Dckt. 23. Debtor seeks to pay $30,335.44 to purchase a $18,141.34 vehicle.

Here, the transaction is not in the best interest of Debtor. The loan calls for a substantial interest charge—16.7%. Moreover, it is unclear to the court how in good faith Debtor could propose to purchase a new car when paying holders of unsecured claims $0.00. A debtor driven to seek the extraordinary relief available under the Bankruptcy Code is hard pressed to provide a good faith explanation as to how a "reward" for filing bankruptcy is to purchase a new car and attempt to borrow money at a 16.7% interest rate.

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 Incur Debt filed by Willie Morris and Monica Tatney-Morris ("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.

7.	**17-24407-E-13** **RPH-5**	**PATRICK/MARGUERITE SEEHUETTER** **Robert Huckaby**	**MOTION TO CONFIRM PLAN** **5-16-18 [91]**

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 16, 2018. By the court's calculation, 62 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied.

Patrick Seehuetter and Marguerite Seehuetter ("Debtor") seek confirmation of the Amended Plan, but they do not provide any credible testimony in their declaration, merely legal conclusions that they are unqualified and unauthorized to make in the place of the court. *See* Dckt. 93. Examples of these lay debtor's legal conclusions and personal findings in place of the court making such determinations are:

> "5. I am informed and therefore believe and declare that the Third Amended Chapter 27 13 Plan complies with applicable law." [Thus it appears that Debtor does not even

so testify that they know, but merely "I'm informed and believe – because if it is true, I WIN!]

"7. The Plan is proposed in good faith and not by any means forbidden by law." [Supplanting the court being burdened with making such legal determination.]

"9. All secured creditors have either accepted the Plan, or their collateral has been 7 surrendered to them, or the Plan provides to pay them pursuant to Section 1325(a)(5)(B)." [Debtor appears to admit that Debtor has no idea what the Plan provides, but can only parrot the possible alternative for treatment of secured claims permitted under the Bankruptcy Code.]

"10. I am informed and therefore believe and declare that I will be able to make the payments called for by the Plan and comply with the Plan." [Debtor appears to admit that Debtor does not have an informed opinion or knowledge of Debtor's finances, but is only informed (by someone else) and believes (because if it is true, DEBTOR WINS!]

"11. The Petition was filed in good faith." [Debtor fails, or refuses, to provide the court with any testimony from which the court could make the required determination, merely dictating Debtor's finding for the court to blindly adopt.]

Declaration, Dckt. 93.

The Amended Plan proposes payments of $128.00 for the first three months, then $200.00 for the next three months, then $328.00 for the next three months, and then $425.00 for the remaining fifty-one months. Dckt. 94. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on June 20, 2018. Dckt. 100. Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). The Chapter 13 Trustee argues that, yet again, no supplemental Schedule J has been filed to support the proposed increase in payments; in fact, what is presented shows only a net disposable income of $130.36. *See* Dckt. 1. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

The Chapter 13 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.

The Chapter 13 Trustee argues that Debtor has not provided evidence that the increased plan payment is possible. Schedule J shows net income of $130.36, but the Plan calls for increases in plan payments to $200.00 and then to $328.00, and then to $425.00. There is no evidence to support those increases. Thus, the court may not approve the Plan.

Finally, the Chapter 13 Trustee notes that the Statement of Financial Affairs is incomplete. It does not contain Debtor's total income for 2016 in Question 4, and it does not contain any business income, even though Debtor's 2016 federal tax return shows gross business income of $879.00.

RULING

Debtor's testimony in their Declaration in support of confirmation is not credible. *See* Dckt. 93. First, while drafted as a joint declaration, the testimony is purported to be stated by one of the debtors, much of it being stated as "I, . . ." The court cannot determine which Debtor, if either, is making the statement.

The Declaration includes non-personal knowledge testimony (FED. R. EVID. 601, 602), but Debtor (though not identified whom) merely parrots conclusions of law or parrots the Bankruptcy Code.

After now more than eight years of the court clearly, fairly, and equally applying the Federal Rules of Evidence and requiring personal knowledge testimony, the court is confident if Debtor had the ability to provide such testimony in their declaration, they and their counsel would have so provided the testimony. Their failure to do so demonstrates their inability to do so.

Debtor has not provided credible evidence for the court to determine that the proposed Chapter 13 Plan complies with the provisions of 11 U.S.C. §§ 1325 and 1322. Debtor demonstrates that she has little knowledge of her plan and these proceedings.

Additionally, the above problems identified by the court have been addressed with Debtor and counsel before. In fact, they were specifically addressed more than one prior to the current Motion being filed, and yet, Debtor submitted a declaration with literal, exact duplicate language. *See* Dckt. 79 (Civil Minutes). The only difference now is that the paragraph numbers have changed.

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 Confirm the Amended Chapter 13 Plan filed by Patrick Seehuetter and Marguerite Seehuetter ("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.

8. **18-22707-E-13 DPC-1** | **MICHAEL/PHYLLIS ENOS** **Peter Cianchetta** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **6-14-18 [12]**

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the 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 June 14, 2018. By the court's calculation, 33 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.

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

A. The Plan exceeds sixty months.

B. The Plan fails to indicate if Michael Enos and Phyllis Enos ("Debtor") will seek the court's approval for the attorney fees and to provide a monthly dividend to pay the attorney fees.

C. Debtor fails to provide business documents related to Origami Owl Jewelry.

D. Debtor fails to provide legible tax returns.

E. Debtor fails to file tax returns for the last four years prior to filing of the Chapter 13 case.

The Chapter 13 Trustee's objections are well-taken. Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Chapter 13 Trustee, the Plan will complete in 233 months. Debtor is proposing plan payments of $982.58 for sixty months, which totals $58,954.80. However, Debtor is proposing to pay debts with a grand total of $209,887.28, without considering the 7.5% Chapter 13 Trustee compensation. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

The Plan fails to indicate if Debtor will seek the court's approval for the attorney fees to comply with Local Bankruptcy Rule 2016-1(c); or file and serve a motion in accordance with 11 U.S.C. §§ 329 and 330. The Plan also fails to provide a monthly dividend to pay the attorney fees.

Debtor has failed to timely provide the Chapter 13 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 the Chapter 13 Trustee. 11 U.S.C. § 521(a)(3). Without Debtor submitting all required documents, the court and the Chapter 13 Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325.

The Chapter 13 Trustee argues that Debtor provided the 2016 federal tax return, however every other page of the document is illegible. Debtor has failed to resend the tax return to the Chapter 13 Trustee as requested. *See* 11 U.S.C. § 521(e)(2)(A)(i); FED. R. BANKR. P. 4002(a)(4)&(b)(3). Debtor has failed to provide the tax transcript. That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

The Internal Revenue Service filed a claim on May 25, 2018, indicating that Debtor has failed to file income taxes for 2017. *See* Claim 8-1. 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 court also notes that this is not Debtor's first, second, or even third bankruptcy case in this District. The bankruptcy process is not unknown to Debtor, and providing the above information should not be a surprise. A list of Debtor's filings in this District include:

Chapter 7 Case 14-20464
Filed: January 17, 2014
Discharge: July 25, 2014

Chapter 13 Case 12-36138
Filed: September 5, 2012
Dismissed: April 23, 2013

Chapter 13 Case 12-36138
Filed: September 5, 2012
Dismissed: April 23, 2013

Chapter 13 Case 11-25701
Filed: March 7, 2011
Dismissed: May 14, 2012

Chapter 13 Case 10-25924
Filed: March 10, 2010
Dismissed: November 19, 2010

Chapter 13 Case 09-33051
Filed: June 25, 2009
Dismissed: February 25, 2010

Chapter 13 Case 05-31606
Filed: September 15, 2005
Dismissed: April 2, 2008

Chapter 7 Case 00-27083
Filed: June 19, 2000
Discharge: September 28, 2000

Chapter 13 Case 99-22029
Filed: February 12, 1999
Dismissed: April 20, 2000

As shown by the above cases, Debtor has existed since 1999 in unproductive Chapter 13 cases, having one dismissed after the other. During that time, Debtor has obtained the benefit of two Chapter 7 discharges, but even that extraordinary relief could not help Debtor prosecute a successful Chapter 13 case for over almost twenty years.

The Plan does not comply with 11 U.S.C. § 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 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 the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

9. 18-21310-E-13 GREGORY/TERRY HASAPIS MOTION TO SELL
MWB-2 Mark Briden 5-22-18 [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, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 22, 2018. By the court's calculation, 56 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion to Sell Property 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 Sell Property is granted.

The Bankruptcy Code permits Gregory Hasapis and Terry Hasapis, Chapter 13 Debtor, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here, Movant proposes to sell a 2006 Harley Davidson motorcycle ("Property").

The proposed purchaser of the Property is Robert Ray, and the term of the sale is: Debtor will sell Property to Robert Ray for $6,500 in cash.

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("The Chapter 13 Trustee") filed a Response on June 26, 2018. Dckt. 37. The Chapter 13 Trustee states that Debtor demonstrates an intent to use the sale proceeds of $6,500 to provide for the general contractor business of Gregory Hasapis. Debtor filed a business budget. Dckt. 23. The Chapter 13 Trustee does not oppose the Motion.

DISCUSSION

At the time of the hearing, the court announced the proposed sale and requested that all other persons interested in submitting overbids present them in open court. At the hearing, the following overbids were presented in open court: xxxxxxxxxxxxxxx.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because Debtor intends to use the sale proceeds to provide for the general contractor business of Debtor.

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 Sell Property filed by Gregory Hasapis and Terry Hasapis, Chapter 13 Debtor, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Gregory Hasapis and Terry Hasapis, Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Robert Ray or nominee ("Buyer"), the 2006 Harley Davidson motorcycle ("Property"), on the following terms:
>
> A. The Property shall be sold to Buyer for $6,500.00, and as further provided in this Order.
>
> B. The sale proceeds shall first be applied to closing costs, other customary and contractual costs and expenses incurred to effectuate the sale.
>
> C. Chapter 13 Debtor is authorized to execute any and all documents reasonably necessary to effectuate the sale.

10. 17-26615-E-13 JOYCE JACKSON
GG-1 Gerald Glazer

OBJECTION TO NOTICE OF POSTPETITION MORTGAGE FEES, EXPENSES, AND CHARGES
5-17-18 [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.

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, Creditor, parties requesting special notice, and Office of the United States Trustee on May 17, 2018. By the court's calculation, 61 days' notice was provided. 28 days' notice is required.

The Objection to Notice of Postpetition Mortgage Fees, Expenses, and Charges 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 Objection to Notice of Postpetition Mortgage Fees, Expenses, and Charges is overruled with prejudice.

Joyce Jackson, the Chapter 13 Debtor ("Objector"), objects to $900.00 listed in Ditech Financial, LLC's ("Creditor") Notice of Postpetition Mortgage Fees, Expenses, and Charges filed on April 27, 2018. Objector argues that the fees described as "attorney fees" should not be allowed with Creditor filing a separate motion for allowance of its requested fees.

Additionally, Objector asserts that there is no evidence that the fees are proper under the contract between the parties, that they must be paid by Objector, or that they are reasonable. FN.1.

FN.1. Debtor makes an interesting argument—Make the creditor incur more attorneys' fees, which Creditor will then seek to recover from Debtor, arguing over the attorneys' fees that have been previously incurred. As this court has observed when debtor's counsel has complained about creditor's filing proofs of claim on time-barred debt (an affirmative defense)—"send the creditor a thank you note, then file an objection to claim, prevail, and then collect the attorneys fees because generally such claims have contractual attorneys' fees provisions. If Debtor really desires to foment further litigation, the court will allow creditor to honor Debtor's desire to generate litigation for which someone will seek attorneys' fees. If Debtor really

believes that $900 is unreasonable and prevails, Creditor will have the privilege of paying Debtor's counsel's legal fees. If Creditor prevails, Debtor will have such privilege.

CREDITOR'S RESPONSE

U.S. Bank National Association, as Trustee, for Conseco Finance Home Equity Loan Trust 2002-A, by and through its servicing agent Ditech Financial LLC fka Green Tree Servicing LLC filed a Response on July 3, 2018. Dckt. 25.

Creditor argues that its notice for post-petition fees is comprised of three separate fees:

$325.00 for a plan review,

$325 for a proof of claim (presumably for preparing it), and

$250 for Form 401A.

Creditor argues that Paragraph 16 of the securing deed of trust provides for the charged fees and argues that the fees were appropriate for the work that led to filing a forty-eight-page proof of claim.

Additionally, Creditor argues that the charged fees are allowable as part of its secured claim under 11 U.S.C. § 506(b) because of the excess equity above Creditor's claim in the value of Objector's real property. (While Creditor uses the word "recoverable" in referring to 11 U.S.C. § 506(b), it is well known that § 506(b) does not create the right to recover attorneys' fees, just when otherwise recoverable attorneys' fees may be included in a secured claim to be paid through the bankruptcy case.)

OBJECTOR'S REPLY

Objector filed a Reply on July 10, 2018. Dckt. 29. Objector argues that no proof has been presented that the charged fees are reasonable because there is no documentation or affidavit from the attorney that Creditor hired to do the legal work.

RULING

Objector argues that charging $900.00, essentially for preparing Creditor's proof of claim, is unreasonable and should be disallowed. Despite Objector stressing that explanation has been provided for what the work consisted of, Creditor's Response provides sufficient detail about the work that was involved by counsel in preparing Creditor's proof of claim.

More troublesome to the court is that the Objection does not contain a single reference to any applicable law for Objector to argue that the fees should be disallowed. Instead, the Objection presents that "[i]t is debtor's position that [Creditor] should file a motion with the court for the requested fees." Dckt. 19. While that may be Objector's belief, she has not presented the court with any authority to support her position. What Objector wants to do is substitute her own legal framework in place of existing law.

Creditor has shown that under the securing deed of trust it is entitled to reimbursement for attorney's fees, and Objector has not presented any convincing argument to overcome allowance of the $900.00 asserted by Creditor in its Notice of Postpetition Mortgage Fees, Expenses, and Charges. The court does not see any good faith basis for Objector to decide that she rule that Creditor's expenses are unreasonable and should be disallowed. Her personal conclusion is insufficient.

The Objection is overruled with prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Notice of Postpetition Mortgage Fees, Expenses, and Charges filed by Joyce Jackson, the Chapter 13 Debtor ("Objector"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is overruled with prejudice.

11. 18-20115-E-13 RPH-1 | **DOUGLAS SCOTT** **Robert Huckaby** | **MOTION TO VALUE COLLATERAL OF INTERNAL REVENUE SERVICE** **7-3-18 [63]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on July 3, 2018. 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 the Internal Revenue Service ("Creditor") is granted.

The Motion filed by Douglas Scott ("Debtor") to value the secured claim of the Internal Revenue Service ("IRS" or "Creditor") is accompanied by Debtor's declaration. Debtor is the owner of real property commonly known as 2210 Dana Court, South Lake Tahoe, California, and of various personal property ("Property"). Debtor seeks to value the Property at a replacement value of $9,331.00 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).

Creditor filed Proof of Claim No. 4-1 on March 14, 2018. The Proof of Claim asserts that $41,938.52 is secured by the Property, that $4,746.30 is a priority unsecured claim, and that $784.26 is a general unsecured claim.

As has been disclosed, in filing proofs of claim, the IRS makes its own calculation for purposes of 11 U.S.C. § 506(a) based upon Debtor's assets and then bifurcates the secured and unsecured portions of its claim. The IRS appears to have followed that procedure here.

DECISION

The Motion specifically alleges that the IRS Claim is secured by "all property of debtor." That is consistent with IRS Proof of Claim 4-1, which asserts all real and personal property is subject to the lien: "All of debtor(s) right, title and interest to property - 26 U.S.C. §6321." Congress provides in 26 U.S.C. § 6321:

> "§ 6321. Lien for taxes.
>
> If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, additional amount, addition to tax, or assessable penalty, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person."

Debtor has not identified which, if any, exemptions could be asserted pursuant to 26 U.S.C. § 6334.

The IRS asserts that the secured portion of the claim is $41,928.53, which appears to be the amount that is for the years that are the subject of the lien notice. Proof of Claim No. 4-1.

Debtor, as the owner of the property has provided his testimony that "all the property" has a value of $9,331.00, relying on the information on Schedules A and B. The court's review of those Schedules discloses:

Schedule A/B	**Stated Value**	**Schedule D Secured Claim**
Real Property		
Dana Ct	$420,000.00	
	($167,614.09)	Deed of Trust - Proof of Claim No. 1
	($5,928.16)	HOA - Proof of Claim No. 3
Personal Property	$9,236.00	
Total Value of Collateral Based on Debtor's Schedules	$255,693.75	

Based upon the evidence presented by Debtor, the value of the collateral securing the IRS claim exceeds the amount of the secured claim, rendering it fully secured.

The Motion is granted, with the court determining that the $41,938.52 (Proof of Claim 1-1) is fully, and over-, secured, Debtor's real and personal property having $255,693.75 of value to which the lien has attached.

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 Douglas Scott ("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 the Internal Revenue Service, Proof of Claim No. 1, which is secured by all real and personal property of Debtor, is determined to be an over-secured claim in the amount of $41,938.52. The value of the collateral, after allowing for all senior liens, is $255,693.75, which is in excess of the amount of the secured claim of the Internal Revenue Service.

12. 18-20115-E-13 DOUGLAS SCOTT — MOTION TO CONFIRM PLAN
RPH-2 Robert Huckaby — 5-16-18 [46]

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 16, 2018. By the court's calculation, 62 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied without prejudice.

Douglas Scott ("Debtor") seeks confirmation of the Amended Plan because Debtor has new income to cure arrears and pay unsecured claims. Dckt. 48. The Amended Plan makes monthly payments of $165.00 for the first three months, and then $1,662.00 for the remaining fifty-seven months. Dckt. 49. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on June 18, 2018. Dckt. 54. A review of Debtor's Plan shows that it relies on the court valuing the secured claims of Internal Revenue Service and American Express Bank. Debtor has failed to file a Motion to Value the Secured Claim of American Express Bank, and the court has determined that the claim of the Internal Revenue Service is fully (over) secured. DCN: RPH-1, July 17, 2018 hearing. Without the court valuing the American Express claim and having valued the Internal Revenue Service claim of $41,938.52 as fully (over) secured, the Plan is not feasible, 11 U.S.C. § 1325(a)(6), and does not provide for the secured claim of the Internal Revenue Service.

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor's net monthly income listed on Schedule J reflects $215.00, however Debtor is proposing a plan payment of $1,662.00 beginning in the fourth month of the Plan. Although Debtor states that he has new income of $400.00 per month from writing life insurance policies, that he saves $60.00 per month from changing to a smaller storage unit, and that he is expecting potential commission from a pending deal, he has failed to amend Schedule I and J to show the accurate income and expenses. *See* Declaration, Dckt. 48. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable. Debtor has failed to state a specific date when the catch-up payment of $4,491.00 will be paid into the Plan. The Plan provides for Golden 1 Credit Union with a monthly payment of $450.00, however Debtor has failed to list this expense on Schedule J.

The Chapter 13 Trustee also 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 while Debtor has reported non-exempt equity in the amount of $2,402.00, and Debtor is proposing a zero percent dividend to unsecured claims, additional equity exists. Debtor has not explained how, under the proposed plan and the schedules filed under penalty of perjury, the unsecured claimants are entitled to a 0 percent dividend when there may be upward of $2,402.00 in non-exempt equity.

The Plan proposes to pay Tahoe Keys Property Owners Association ("Creditor") in Class 4 directly by Debtor in the amount of $482.00 per month, however Creditor has filed a secured claim on March 12, 2018, alleging that Debtor owes $5,928.16 in arrears. The Chapter 13 Trustee holds that the claim should be listed in Class 1 of the Plan and paid by the Chapter 13 Trustee.

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 Douglas Scott ("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 without prejudice, and the proposed Chapter 13 Plan is not confirmed.

13. **18-22716-E-13** **DOMINIC MIZZI** **OBJECTION TO CONFIRMATION OF**
DPC-1 **Mary Ellen Terranella** **PLAN BY DAVID P. CUSICK**
6-11-18 [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.

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 June 11, 2018. By the court's calculation, 36 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.

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

A. Dominic Mizzi ("Debtor") failed to attend the Meeting of Creditors, and

B. Debtor failed to provide requested business documents.

CHAPTER 13 TRUSTEE'S STATUS UPDATE

The Chapter 13 Trustee filed a Status Update on July 10, 2018, stating that Debtor attended the continued Meeting of Creditors on July 5, 2018, but that the other ground for missing documents was outstanding still. Dckt. 18.

RULING

The Chapter 13 Trustee's objection is well-taken. Debtor has failed to timely provide the Chapter 13 Trustee with business documents including:

A. Questionnaire,
B. Two years of tax returns,
C. Six months of profit and loss statements, and
D. Six months of bank account statements.

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 the Chapter 13 Trustee. 11 U.S.C. § 521(a)(3). Without Debtor submitting all required documents, the court and the Chapter 13 Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325.

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 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 the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

14. **18-23016-E-13** **TOMMY/SHERRI CORDRAY** **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK**
DPC-1 **Steven Albert** **6-21-18 [15]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on June 21, 2018. 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.

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

A. The Plan fails the Chapter 7 liquidation analysis.

B. The Plan unfairly discriminates against general unsecured claims.

C. The Plan is not Tommy Cordray and Sherri Cordray's ("Debtor") best effort.

B. The Plan fails to provide a monthly dividend to pay attorney fees.

DEBTOR'S RESPONSE

Debtor filed a Response on July 10, 2018. Dckt. 19. Debtor states that an Amended Schedule B will be filed to remove a non-existent worker's compensation claim and to list a retail value for Debtor's Hummer. Debtor requests that an order confirming include a provision for payment of $52.50 per month to attorney's fees and that annual tax refunds above $2,000.00 be turned over to the Chapter 13 Trustee beginning with the 2018 tax year.

DISCUSSION

The Chapter 13 Trustee's objections are well-taken. 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 supplied insufficient information relating to a pending worker's compensation case disclosed on Schedule B to assist the Chapter 13 Trustee in determining the value of the case. Debtor fails to report the value of the case. Debtor is proposing a 0% dividend to unsecured claims. Despite Debtor's contention, Schedule B has not been amended to remove the claim.

The Chapter 13 Trustee also opposes confirmation due to possible unfair discrimination to unsecured claims under 11 U.S.C. § 1322(b)(1). Debtor's Plan improperly lists Logix Federal Credit Union's 2005 Hummer in Class 2(A); the debt was incurred more than 910 days prior to filing and can be valued. Debtor has failed to file a motion to value collateral to date. Again, Debtor has not yet filed an amended Schedule B to account for claim correctly.

The Chapter 13 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 is under the median income and proposes plan payments of $561.00 for sixty months with a 0% dividend to unsecured claims. Debtor's 2017 income tax returns reflect that he received a refund of $2,823.00 from the Internal Revenue Service and $1,380.00 from the Franchise Tax Board, however, the Plan does not provide to pay any future tax refunds in to the Plan for the benefit of creditors. Debtor proposes resolving this issue by providing tax refunds in excess of $2,000.00 annually.

The Plan fails to provide a monthly dividend to pay attorney fees because $0.00 of each monthly plan payment shall be paid on account of administrative expenses pursuant to § 3.06 of the Plan. Dckt. 5. Debtor proposes a dividend of $52.50 per month to resolve this ground.

Debtor has filed an Amended Schedule A/B. Dckt. 21. These Amended Schedules may raise more questions than they resolve. On Original Schedule A/B, Debtor valued the Hummer at $13,000.00. Dckt. 1 at 12. On Amended Schedule A/B, Debtor states that the $13,000 figure is "trade-in value," and that $17,825 is the showroom, ready-to-drive-off-the-lot retail value. Amended Schedule A/B states that this is a 2005 (fourteen-model-year-old) vehicle with 170,000 miles on it. No evidence is presented of the value, other than an Amended Schedule A/B. Presumably, on Original Schedule A/B, Debtor and Debtor's counsel used the correct, real value of the Hummer, and not an incorrect "trade-in value," in violation of the requirements of 11 U.S.C. § 506(a)(2).

Debtor offers no explanation as to what has happened to the Worker's Compensation claim, how it is being prosecuted, whether counsel would be employed, and how it is or has been properly administered by Debtor as the fiduciary for property of the bankruptcy estate.

The Trustee's Objection to Confirmation is sustained.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by 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 the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

15. 18-22819-E-13 DPC-2 | **RANDY TURNER** **Aubrey Jacobsen** | **AMENDED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **6-18-18 [27]**

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 June 18, 2018. By the court's calculation, 29 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. Randy Turner ("Debtor") failed to provide for a secured claim in the Plan and intended to pay the creditor outside the Plan.

B. The Plan is not feasible because Debtor deducts $0.00 for routine household expenses on Schedule J.

C. The Plan does not provide all of Debtor's projected disposable income to fund the Plan.

DEBTOR'S RESPONSE

Debtor filed a Response on June 21, 2018. Dckt. 32. Debtor states that an amended [the response contains a clerical error, skipping over the word of what will be filed) to provide for the missing secured claim, future tax refunds, and additional monthly expenses. It appears that it will be an amended plan.

RULING

Unfortunately for Debtor, no such supplemental schedule or amended plan has been filed.

The Chapter 13 Trustee's objections are well-taken. Ally Bank ("Creditor") asserts a claim of $30,025.00 in this case. Debtor's Schedule D estimates the amount of Creditor's claim as $38,000.00 and indicates that it is secured by a 2016 Chevrolet Malibu. The Plan does not provide for this claim.

The Chapter 13 Trustee alleges that the Plan is not feasible and violates 11 U.S.C. § 1322(b)(2) because it contains no provision for payment of Creditor's matured obligation, which is secured by Debtor's residence. *See* 11 U.S.C. § 1325(a)(6).

11 U.S.C. § 1322(a) is the section of the Bankruptcy Code that specifies the mandatory provisions of a plan. It requires only that a debtor adequately fund a plan with future earnings or other future income that is paid over to the Chapter 13 Trustee (11 U.S.C. § 1322(a)(1)), provide for payment in full of priority claims (11 U.S.C. § 1322(a)(2) & (4)), and provide the same treatment for each claim in a particular class (11 U.S.C. § 1322(a)(3)). Nothing in § 1322(a) compels a debtor to propose a plan that provides for a secured claim, however.

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

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

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

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

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

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

When a plan does not provide for a secured claim, the remedy is not denial of confirmation. Instead, the claimholder may seek termination of the automatic stay so that it may repossess or foreclose upon its collateral. The absence of a plan provision is good evidence that the collateral for the claim is not necessary for the debtor's rehabilitation and that the claim will not be paid. This is cause for relief from the automatic stay. *See* 11 U.S.C. § 362(d)(1).

Notwithstanding the absence of a requirement in 11 U.S.C. § 1322(a) that a plan provide for a secured claim, the fact that this Plan does not provide for respondent Creditor's secured claim raises doubts about the Plan's feasibility. *See* 11 U.S.C. § 1325(a)(6). That is reason to sustain the Objection.

The Chapter 13 Trustee argues that the Plan is not feasible according to 11 U.S.C. § 1325(a)(6). On Schedule I, Debtor reports his total net income as $6,374.95. On Schedule J, Debtor's expenses total $2,914.20 for a household of three people. Debtor deducts $0.00 for routine household expenses, and he only deducts $90.00 for electricity/gas and $400 for food.

Debtor has failed to report his future tax refunds as his income. Debtor's 2017 federal tax return shows that he received $5,428.00 and the state tax return shows that he received $3,083.00.

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 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 the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

16. **16-25321-E-7** **JAY COHEN** **MOTION TO RECONVERT CASE TO CHAPTER 13**
SLE-3 **Steele Lanphier** **6-11-18 [170]**

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 creditors and Office of the United States Trustee on June 11, 2018. By the court's calculation, 36 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(4) (requiring twenty-one-days' notice).

The Motion to Reconvert was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 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 Reconvert the Chapter 7 Bankruptcy Case to a Case under Chapter 13 is denied without prejudice.

Jay Cohen ("Debtor") seeks to convert this case, initially filed under Chapter 13 and subsequently converted to Chapter 7, back to a case under Chapter 13. The Bankruptcy Code authorizes a one-time, near-absolute right of conversion from Chapter 7 to Chapter 13. 11 U.S.C. § 706(a); *see also Marrama v. Citizens Bank of Mass.*, 549 U.S. 365 (2007). However, the availability of this one-time, near-absolute right of conversion requires that "the case has not been converted under section 1112, 1208, or 1307 of this title." 11 U.S.C. § 706(a).

Debtor asserts in the Motion that the case should be converted because he has obtained a more lucrative job (without providing more detail), and his declaration states that he thinks any sale of his home will yield a 0% distribution to creditors (without explaining why). Dckt. 170, 172.

CHAPTER 7 TRUSTEE'S OPPOSITION

J. Michael Hopper ("the Chapter 7 Trustee") filed an Opposition on June 26, 2018. Dckt. 180. The Chapter 7 Trustee argues that because Debtor has claimed an exemption of $0.00 in his real property commonly known as 9029 Boise Court, Sacramento, California ("Property"), then there is additional equity of $60,000.00 that can be paid to unsecured claims upon sale of the Property.

The Chapter 7 Trustee argues that Debtor is incorrect to argue that unsecured claims would not receive anything from the sale of the Property. He notes that liquidation under Chapter 7 would provide full payment of the secured claim against the Property in a quick manner while also providing substantial proceeds for unsecured claims.

PREVIOUS CONVERSION

Debtor initially filed this case under Chapter 13 on August 12, 2016, Dckt. 1. A plan was confirmed on March 28, 2017, and was later modified on January 24, 2018. Dckt. 82, 118. Neither of those plans required Debtor to sell his Property. Dckt. 71, 98.

On January 27, 2018, Debtor filed a Notice of Voluntary Conversion to Chapter 7. Dckt. 120. His attached declaration asserts that Chapter 7 is more reasonable for him because there are no arrears on his home mortgage. Dckt. 121.

DISCUSSION

Here, Debtor's case has been converted previously, pursuant to 11 U.S.C. § 1307(c). That extinguishes Debtor's near-absolute right under 11 U.S.C. § 706(a) to convert a Chapter 7 case "at any time." *Gualtieri v. Goux (In re Goux)*, 65 B.R. 121 (Bankr. E.D.N.Y. 1986); *see* H.R. REP. NO. 595 (1997) ("If the case has already once been converted from chapter 11 or 13 to [C]hapter 7, then the debtor does not have that right [of conversion].")

While there is a sharp divide whether this permits debtors to request reconversion at all, a slight majority of courts have held that debtors may still make such a motion. *Compare In re Johnson*, 116 B.R. 224 (Bankr. D. Idaho 1990) (acknowledging the court's authority to allow reconversion while denying due to failure of debtors to demonstrate facts that would persuade the court to exercise its discretion), *with In re Banks*, 252 B.R. 399, 399 (Bankr. E.D. Mich. 2000) (interpreting 11 U.S.C. § 706(a) as placing a bar on any reconversion). While there is no binding precedent on this matter in this Circuit, previous decisions of this court, as well as of the Bankruptcy Appellate Panel for the Ninth Circuit, show a trend toward adoption of the majority rule: allowing reconversion on a discretionary basis. *In re De La Salle*, No. 10-29678-E-7, 2011 Bankr. LEXIS 5621, at *26 (Bankr. E.D. Cal. Sept. 6, 2011) ("If [debtors] wish to propose a confirmable plan, they may seek to re-convert this case to one under Chapter 13. . ."); *see Gallagher v. Dockery (In re Gallagher)*, No. CC-13-1368-TaKuPa, 2014 Bankr. LEXIS 1037 (B.A.P. 9th Cir. Mar. 17, 2014) (assessing whether a tax refund was rightfully the property of the Chapter 13 or Chapter 7 estate in a case converted to Chapter 7 then subsequently reconverted to Chapter 13).

It remains within the court's discretion, therefore, whether to grant such a reconversion. Generally, a court will grant such a motion absent abuse of bankruptcy law and if the confirmed plan is in accordance with the requirements of 11 U.S.C. § 1325, in particular whether a plan is feasible under 11 U.S.C. § 1325(a)(6). Of great weight in such considerations is any change in circumstance from the initial failed plan that would suggest more likelihood of success now. *In re Johnson*, 116 B.R. at 227.

Grounds Stated with Particularity
For Relief Requested

Though the court considers the present Motion, the first inquiry is the grounds stated with particularity (Federal Rule of Bankruptcy Procedure 9013) upon which this relief is request. The Motion, Dckt. 170, states with particularity the following grounds:

> A. After the Chapter 13 case was originally filed, Debtor's "financial and/or legal situation has [stating it in the present] changed and the Debtor moved the court to convert the Chapter 13 to a Chapter 7." Motion ¶ 2.

While in part written in the present, this paragraph refers to the past—Debtor's election to voluntarily convert his case from Chapter 13 to one under Chapter 7. As pleaded, it appears that Debtor and Debtor's counsel are unaware of whether Debtor suffered a change in his financial condition, or if there was a change in the legal issues, or possibly both. Rather, this appears to be a boilerplate, non-specific, non-stated-with-particularity conclusion.

> B. Debtor is eligible to be a debtor under Chapter 13. Motion ¶ 4.
>
> C. "As Debtor has obtained a more lucrative job the Debtor believes it is in his best interest to re-convert this case to a Chapter 13." Motion ¶ 5.

Generally, it is alleged that Debtor has obtained "a more lucrative" job (whatever that may be—$1 or $100,000), and it is in "his" interest, not necessarily creditors' and the bankruptcy estate's, to take this case away from the Chapter 7 Trustee and give it to Debtor.

Nothing else is alleged.

Debtor provides his Declaration (Dckt. 172) to support the "grounds" stated in the Motion with particularity. Presumably, a debtor seeking to reconvert a case to Chapter 13 in good faith has every incentive to provide clear, detailed factual testimony to allow the court to make the necessary findings of fact and conclusions of law.

Debtor provides the following personal knowledge testimony (Federal Rules of Evidence 601 & 602) to support his request to reconvert this case to Chapter 13, following the Chapter 7 Trustee giving notice there are assets to be administered in this case, after Debtor having elected to convert it to Chapter 7 and not pursue a Chapter 13 Plan.

A. "My financial and/or legal situation unexpectedly changed in that my mortgage holder filed a claim in my Chapter 13 case claiming that I had no arrears." Declaration ¶ 2, Dckt. 172.

B. "The Court was as confused and my attorney and I but taking that statement as fact it made more sense to convert my Chapter 13 to a Chapter 7." *Id.* ¶ 3.

The Motion makes no reference to there being any confusion by the court.

C. "I had my attorney make the appropriate motions understanding that my home had a very small amount of equity, much less that I could protect under CCP Section 704." *Id.* ¶ 4.

It appears Debtor testifies that he had no equity in his home and did not see a value in it to protect through a Chapter 13 Plan.

D. "Much to our surprise the Chapter 7 Trustee assigned claims that there is considerable equity and is moving to sell my home."

Debtor testifies that he made an intentional economic decision. Now that the Chapter 7 Trustee disagrees and believes that there is substantial value, Debtor does not like the Chapter 7 Trustee acting to administer property of the Estate.

E. "The problem I have is that if and when the home sells I believe that the Trustee, the Trustee's attorney and the Trustee's Real Estate agent will be the only real winners." *Id.* ¶ 6.

Debtor's concern is ill-founded. As this court has done for the past eight years, trustees have to administer property of the bankruptcy estate to benefit the estate—not serve as the liquidating agent for banks, debt buyers, and investors. When the court approves such sales, the bankruptcy estate will generate substantial monies for creditors other then those holding secured claims and administrative expenses.

F. Debtor's Chapter 13 Plan provided for a 0.00% dividend for creditors holding general unsecured claims, and Debtor's opinion is that any sale of the bankruptcy estate's property would generate a 0.00% dividend. *Id.* ¶¶ 6-7.

As noted above, if the court were to approve a sale, creditors other than a creditor with a secured claim would be paid. Generally, this would be creditors holding general unsecured claims or priority unsecured claims.

The Chapter 7 Trustee's Opposition is not supported by a declaration of the Chapter 7 Trustee providing the court with testimony countering the beliefs of Debtor. The Opposition does refer to the court's prior order authorizing the hiring of a real estate broker to market the property. It is alleged (the court not

seeing any evidence) that the property is now listed for sale with a price of $360,000. Opposition ¶ 3, Dckt. 180.

The Opposition refers to Proof of Claim No. 3 in which the creditor having a deed of trust securing its claim stating its claim to be $263,954.00. The Chapter 7 Trustee alleges that this would result in there being around $60,000 of monies for the estate for payment of unsecured claims, as well as the administrative expenses. That does not appear to be an irrational argument, with the court's rough liquidation analysis being:

Projected Sales Price	$335,000	(conservative assumption reduction)
Commission/Closing Costs	($ 50,800)	(assumed aggregate 8%)
Secured Claim Payment	($265,000)	(conservative rounding up)
Net for Estate	$19,200	
Trustee Atty Fees	($2,000)	(Assumes no extensive litigation)
Trustee Fees	($4,800)	(Computed on monies for estate, not liquidating property for creditor holding secured claim)
Net For Creditors	$12,400	

Review of Debtor's Schedules and Prosecution of Chapter 13 Plan

Debtor commenced this case on August 12, 2016, with the filing of the Petition for relief under Chapter 13. Dckt. 1. On Schedule A, Debtor stated under penalty of perjury that the real property at issue had a value of $210,000. *Id.* at 11. On Schedule D, Debtor states that the claim secured by the Property is ($263,954). *Id.* at 19. On Schedule C, Debtor does not claim an exemption in the Property. *Id.* at 17–18.

On Schedule I, Debtor states that he is self-employed, generating $4,163 per month in net income from his business. *Id.* at 34–35. Debtor failed to file as an attachment to Schedule I the statement of gross income and expenses for his business showing how he computes $4,163 in monthly net income.

On Schedule J, Debtor states that he has only ($1,607) in monthly expenses (no mortgage, insurance, property taxes listed) for his family of two (Debtor and minor child). While some of the expense amounts appear debatable, there is a glaring missing expense—Debtor's federal income tax, state income tax, and self-employment tax obligations for his $49,956 in annual net income.

After catching an objection to confirmation because the projected disposable income was insufficient to fund the Plan (Objection, Dckt. 20), Debtor filed an amended plan. Debtor then filed Amended Schedules I and J. Dckt. 30. Debtor did not change the income on Amended Schedule I, stating it to still be $4,163 per month. *Id.* at 2–3. On Amended Schedule J, Debtor squeezed his expenses to ($1,510). *Id.* at 4–5.

On November 10, 2016, Debtor filed his Second Amended Schedules I and J. Dckt. 54. For Second Amended Schedule I, Debtor did not change the amount of net income but added the required statement showing the gross income and expenses. *Id.* at 3–8. The expenses do not include any taxes.

The order confirming a Chapter 13 Plan for Debtor was entered on April 13, 2017. Dckt. 86. By October 2017, the Chapter 13 Trustee filed a Motion to Dismiss the case because Debtor was in default for almost three full months of payments. Dckt. 89.

In response, Debtor filed a modified plan and motion to confirm. Debtor also filed a Third Amended Schedule I, showing that he was no longer self-employed but had a $7,500 wage income job. From that, $2,500 was withheld for taxes (33.3%), with Debtor reporting $5,000 per month in take-home income. Dckt. 99 at 1–2. On Amended Schedule J, Debtor's expenses increased to $2,047 per month, yielding monthly net income of $2,935 to fund a plan. *Id.* at 3–4. The court granted the motion, and the Modified Plan was ordered confirmed. Dckt. 118.

Debtor then elected days later to convert the case to one under Chapter 7. That was shortly after the court determined, pursuant to an Order to Show Cause, that the creditor holding the secured claim has "admitted" there was no pre-petition arrearage. Order, Dckt. 119, Civil Minutes 116. As stated by Debtor, the response to the "good news" that the court was deeming creditor admitting that there was no $30,000 prepetition arrearage was to head to Chapter 7 on January 27, 2018.

When converted, Debtor did not amend Schedule C, and no exemption had been or was claimed in the Property.

The Chapter 7 Trustee filed a notice of assets (April 6, 2018 Docket Entry Report; Notice, Dckt. 152). On May 2, 2018, the Chapter 7 Trustee obtained the order authorizing the employment of the real estate broker. On May 7, Debtor filed an Amended Schedule C, claiming an exemption in the amount of $0.00 in the Property. Dckt. 164 and 166 at 3.

On June 15, 2018, Debtor filed a Third Amended Schedule C, again claiming a $0.00 exemption in the Property, still stating the Property had a value of $210,000. Dckt. 178 at 1.

On July 2, 2018, Debtor filed an Amended Schedule A/B, now stating that the Property has a value of $350,000. Dckt. 185 at 3. Debtor filed a Fourth Amended Schedule C, now claiming an exemption of $86,040 in the Property. *Id.* at 9.

Prosecution of Chapter 13 Case

Debtor offers no information as to how he would now successfully prosecute a Chapter 13 case or what plan he would be proposing. Debtor provides no information as to what his projected disposable income would be, how much he will fund the plan, and what creditors will be paid. This case now being two years old, Debtor does not address the legal and equitable issues concerning two years being "wasted" and any plan being artificially truncated by Debtor's desire not to have a plan of reorganization or to restructure, but instead choosing to convert this case to one under Chapter 7.

Debtor does not address his failure to claim an exemption, therefore forcing the Chapter 7 Trustee into having to incur the cost and expense of administering the Property as part of fulfilling his fiduciary duties to the bankruptcy estate.

Debtor has not shown grounds, legal and equitable, for reconverting this case to one under Chapter 13. Debtor does not address how he will compensate the bankruptcy estate for the expenses incurred in trying to administer an asset in which Debtor did not claim an exemption.

Debtor's request seems to be a near panic-induced filing to interfere with the Chapter 7 Trustee liquidating property of the Estate. 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 Reconvert filed by Jay Cohen ("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 Reconvert is denied without prejudice.

17. **16-25321-E-7** **JAY COHEN** **CONTINUED MOTION FOR**
DNL-3 **Steele Lanphier** **TURNOVER OF PROPERTY**
6-13-18 [174]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 13, 2018. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

The Motion for Turnover was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 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 Turnover is granted.

Michael Hopper, the Chapter 7 Trustee, ("Movant") in the above entitled case and moving party herein, seeks an order for turnover as to the real property commonly known as 9029 Boise Court, Sacramento, California ("Property").

JUNE 28, 2018 HEARING

At the hearing, the court continued the matter to 3:00 p.m. on July 17, 2018, to allow Jay Cohen ("Debtor") time to file amended schedules. Dckt. 188.

DISCUSSION

11 U.S.C. § 542 and Federal Rule of Bankruptcy Procedure 7001(1) permit a motion to obtain an order for turnover of property of the estate if the debtor fails and refuses to turnover an asset voluntarily. Federal Rule of Bankruptcy Procedure 7001(1) defines an adversary proceeding as,

> (1) a proceeding to recover money or property, other than a proceeding to compel the debtor to deliver property to the trustee, or a proceeding under § 554(b) or § 725 of the Code, Rule 2017, or Rule 6002.

In this case, Movant has initiated this proceeding to compel Debtor to deliver property to Movant. The Federal Rules of Bankruptcy Procedure permit the trustee to obtain turnover from Debtor without filing an adversary proceeding. This Motion for injunctive relief, in the form of a court order requiring that Debtor turnover specific items of property, is therefore appropriate under Federal Rule of Bankruptcy Procedure 7001(1).

The filing of a bankruptcy petition under 11 U.S.C. §§ 301, 302 or 303 creates a bankruptcy estate. 11 U.S.C. § 541(a). Bankruptcy Code Section 541(a)(1) defines property of the estate to include "all legal or equitable interests of the debtor in property as of the commencement of the case." If the debtor has an equitable or legal interest in property from the filing date, then that property falls within the debtor's bankruptcy estate and is subject to turnover. 11 U.S.C. § 542(a).

A bankruptcy court may order turnover of property to debtor's estate if, among other things, such property is considered to be property of the estate. *Collect Access LLC v. Hernandez (In re Hernandez)*, 483 B.R. 713 (B.A.P. 9th Cir. 2012); *see also* 11 U.S.C. §§ 541(a), 542(a). Section 542(a) requires someone in possession of property of the estate to deliver such property to the trustee. Pursuant to 11 U.S.C. § 542, a trustee is entitled to turnover of all property of the estate from a debtor. Most notably, pursuant to 11 U.S.C. § 521(a)(4), Debtor is required to deliver all of the property of the estate and documentation related to the property of the estate to the Chapter 7 Trustee.

No opposition has been filed to this Motion by Debtor or any other party in interest.

Enforcement of Turnover Orders

Though the court does not anticipate there being any failure by Debtor to comply with the order of this court, the Ninth Circuit has reaffirmed a bankruptcy judge's power to issue corrective sanctions, including incarceration, to obtain a person's compliance with a court order. *Gharib v. Casey (In re Kenny G Enterprises, LLC)*, No. 16-55007, 16-55008, 2017 U.S. App. LEXIS 13731 (9th Cir. July 28, 2017). Though an unpublished decision, *Gharib* provides a good survey of the reported decisions addressing the use of corrective sanctions by an Article I bankruptcy judge. *Id.* at *2–5.

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 for Turnover of Property filed by Michael Hopper, the Chapter 7 Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Turnover of Property is granted.

IT IS FURTHER ORDERED that Jay Cohen ("Debtor"), and each of them, shall deliver on or before **July 26, 2018**, possession of the real property commonly known as 9029 Boise Court, Sacramento, California ("Property"), with all of their personal property, personal property of any other persons that Debtor, and each of them, allowed access to the Property; and any other person or persons that Debtor, and each of them, allowed access to the Property removed from the Property.

18. 17-25221-E-13 PGM-4 | **TOMMIE RICHARDSON** **Peter Macaluso** | **CONTINUED MOTION TO CONFIRM PLAN** **5-14-18 [98]**

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 14, 2018. By the court's calculation, 43 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.

Tommie Richardson ("Debtor") seeks confirmation of the Amended Plan, but he does not present any explanation why he is proposing an Amended Plan. *See* Dckt. 101. The Amended Plan in Section 2.01 proposes "a monthly basis the sum of $165,970.66 as of 5-18," lasting for nine months; no additional provisions are attached. Dckt. 100. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on May 24, 2018. Dckt. 110. He argues that the Amended Plan relies upon the court sustaining an objection to the claim of Seneca Leandro View LLC, and without sustaining that objection, the full amount of the claim will be approximately $258,176.66. The Chapter 13 Trustee argues that Debtor will not have sufficient plan funds to pay all claims.

CONTINUANCE OF HEARING

On June 6, 2018, Debtor filed an *Ex Parte* Request to continue the hearing. Dckt. 116. The court granted Debtor's request and continued the hearing to 3:00 p.m. on July 17, 2018. Dckt. 117.

DEBTOR'S REPLY

Debtor filed a Reply on June 19, 2018. Dckt. 128. Debtor argues that an adversary proceeding has been filed to determine the validity of the claim of Seneca Leandro View LLC and that the Plan should be confirmed with funds held back on the disputed claim.

JUNE 26, 2018 HEARING

At the June 26, 2018 hearing, the court announced that this matter had been continued to 3:00 p.m. on July 17, by prior order. Dckt. 133.

CHAPTER 13 TRUSTEE'S AMENDED OPPOSITION

The Chapter 13 Trustee filed an Amended Opposition on July 3, 2018. Dckt. 135. The Chapter 13 Trustee argues that there are now three additional claims against funds of the Estate:

California State Controller.....($31,277.55)
City of Oakland.....($ 335.00)
City of Oakland - Wide Lanes.....($ 1,257.38)

See 11 U.S.C. § 1325(a)(6).

RULING

On June 20, 2018, Debtor filed an action entitled as seeking: (1) Declaratory Relief, (2) Negligence, (3) Breach of Covenant of Good Faith and Fair Dealing, (4) Breach of Contract, and (5) Objection to Claim No. 7, naming Seneca Leandro View, LLC as the Defendant. 18-02099. No Certificate of Service has been filed by Debtor, the Plaintiff.

Reviewing the allegations, and considering what Seneca has asserted in its proof of claim, this appears to be potentially complex litigation. The First Cause of Action is a bit bewildering, in that Debtor only seeks declaratory relief, not an adjudication of the contract rights between the parties. Debtor can address whether, by virtue of the First Cause of Action he is admitting that no improper conduct has

occurred, but the parties are merely asserting conflicting understandings of the agreement and Debtor is attempting to avoid any breaches in the future.

The other Causes of Action appear to turn the tables on Seneca, now asserting that the bankruptcy estate has affirmative claims against Seneca. Such claims have to be taken into account through the Chapter 13 Plan, with possible value for creditors. Debtor asserts that the estate is entitled to recovery of damages, including $213,000 in actual damages, plus attorneys' fees and costs.

The proposed Amended Plan provides that it is fully funded with $161,970.66 that has been paid to the Chapter 13 Trustee. Motion, Dckt. 98. Debtor asserts that this fully funds all claims. That would be true, so long as Seneca does not have a claim in this case. If Seneca has the claim it has asserted, Seneca alone would exhaust the monies paid in so far, and still would be owed more money.

A Plan, no matter how righteous Debtor may believe his position, must provide for the litigation, Seneca's claim if allowed, and some hold back of monies rather than disbursing everything to the other creditors and leaving Seneca with a "tough luck, we called it wrong," if Seneca prevails and Debtor does not otherwise fund the Plan.

This matter has been continued enough times, so the court is not going to continue it further. Rather than simplifying the dispute, Seneca has shown a lack of attention to its claim, and Debtor has compounded the dispute.

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 Tommie Richardson ("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.

19. 16-22328-E-13 MARIA COLEMAN MOTION TO INCUR DEBT
SS-5 Scott Shumaker 7-3-18 [96]

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the 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 July 3, 2018. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The Motion to Incur Debt is xxxxxxxxxxxxx.

Maria Coleman ("Debtor") seeks permission to purchase 2016 Kia Optima, with a total purchase price of $16,999.00 and monthly payments of $361.32 over seventy-two months with a 13.99% fixed interest rate. The terms of the proposed purchase and financing are:

A.	Vehicle Cash Price	$16,999.00
B.	Document Fee	$ 80.00
C.	Theft Deterrent System	$ 189.00
D.	Sales Tax	$ 1,338.27
E.	MVSC Fee	$ 29.00
F.	Total Cash Price	$18,635.27
G.	License & Tire Fees	$ 304.00
H.	Total Purchase Price	$18,939.27

Debtor is making a down payment of $1,500, so seeking to finance $17,439.27 of the purchase price at the 13.99% interest over six year. The Monthly Payments will be $361.32.

Review of Debtor's Second Modified Plan

Under the confirmed Modified Plan, Debtor is making $485.00 monthly plan payments for the remaining term of the plan (through March 2021).

In obtaining confirmation of the Modified Plan, Debtor provided her budget as Exhibit 1, Dckt. 68. Debtor computes her projected disposable income to be $485.00, which the court relied on in confirming the Second Modified Plan. Debtor's budget was so tight that she could only provided for a 0.00% dividend to creditors holding $119,460.17 in general unsecured claims. Plan ¶ 2.15, Dckt. 67.

With her Declaration, Debtor has provided her revised budget to show how she can reduce expenses to pay for this vehicle. For Debtor and her disabled son, Debtor cuts in half their clothing and laundry expense (from $100 to $50), cuts in half the personal care and products expense (from $150 to $75), and decreases the transportation expense from $350 to $300 per month (a newer car getting better gas mileage and needing fewer repairs does not make a reduction per se unreasonable). That reduces expenses by $175 per month.

While repair and fuel expenses may go down, the vehicle insurance and registration most likely increase. Debtor has made no provision for such increases.

Under her revised budget Debtor states that she will have $298.00 per month in net monthly income to fund her Plan—the Plan that requires a $485.00 per month plan payment. Debtor states that she will surrender her 2011 vehicle, be able to remove the payment from the Plan, and that creditor falls into the Class 7 0.00% dividend for any deficiency.

In her Motion, Debtor states that she will address this shortfall by again filing a new Modified Plan, presumably to reduce the plan payment to $298 per month.

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on July 6, 2018. Dckt. 101. The Chapter 13 Trustee states that the interest rate proposed may be unreasonable because there is no discussion of whether Debtor spoke with other car dealers.

Additionally, he notes that an apparent service problem from an *ex parte* motion has been resolved by Santander Consumer USA being served with notice of the Motion.

DISCUSSION

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." FED. R. BANKR.

P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

Here, there is a question whether the transaction is in the best interest of Debtor and is commercially reasonable. The loan calls for a substantial interest charge—13.99%. A debtor driven to seek the extraordinary relief available under the Bankruptcy Code is hard pressed to provide a good faith explanation as to how purchasing a car and attempting to borrow money at a 13.99% interest rate is reasonable.

While the court appreciates the need for a reliable vehicle, Debtor does not testify as to what efforts were made for alternative vehicles and financing. An interest rate of 13.99% telegraphs that the lender either believes that Debtor will default and the extra interest is needed to protect the lender, or that lender seeks to take unfair advantage of Debtor.

At the hearing, **xxxxxxxxxxxxxxxxxxxxxxx**

The Motion is **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 Incur Debt filed by Maria Coleman ("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 xxxxxxxxxxxxxx.

20. **18-20929-E-13** **SHARON SUMPTER** **MOTION TO CONFIRM PLAN**
TAG-1 **Aubrey Jacobsen** **5-16-18 [31]**

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 Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 16, 2018. By the court's calculation, 62 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is xxxxxx.

Sharon Sumpter ("Debtor") seeks confirmation of the Amended Plan because there have been several changes to her finances. Debtor has also concluded that her plan needs to include the sale of he, resulting in the biggest change that she now proposes to sell her home. Dckts. 31, 33. The Amended Plan calls for plan payments in the amount of $1,870.00 to begin in month three and continue until Debtor's real property is sold; after the property is sold, plan payments are proposed to be $170.00 per month for the duration of the plan. Dckt. 34. If the property is not sold within six months, then the plan contemplates that claims for DiTech and Vallejo Sanitation and Flood Control will be moved to Class 3 with the automatic stay lifted. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

Debtor provides her Declaration, Dckt. 31, in support of the Motion. Debtor provides credible, informational testimony that includes an explanation of the reasons for the default in payments under the initial Plan, what has changed, Debtor's thoughtful consideration of her finances, and a refined view of what is financially reasonable for Debtor. This testimony of Debtor appears to be the foundation for building a successful reorganization.

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on June 18, 2018. Dckt. 50. The Chapter 13 Trustee argues that the Amended Plan fails to state the amount of proceeds from a sale of real property that will be paid into the plan to satisfy secured claims. It also does not provide for a student loan claim filed in this case. *See* Proof of Claim No. 5-1.

RULING

At the hearing, Debtor proposed amendments to the Amended Plan to be inserted in the order confirming. Debtor proposes:

A. **xxxxxxxxxxxxxxxxxxxx**; and

B. **xxxxxxxxxxxxxxxxxxxx**.

The Amended Plan complies with 11 U.S.C. §§ 1322, 1323, 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 Sharon Sumpter ("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 May 16, 2018, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick ("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.~~

21. 17-23930-E-13 MEGAN CARR MOTION TO MODIFY PLAN
MRL-1 Mikalah Liviakis 5-22-18 [29]

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, and Office of the United States Trustee on May 22, 2018. 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).

The Motion to Confirm the Modified Plan is granted.

Megan Carr ("Debtor") seeks confirmation of the Modified Plan because she reduced her work hours recently to a medical condition to improve. Dckt. 32. The Modified Plan calls for $390.00 to be paid for six months, then $0.00 to be paid for eight months, and then $390.00 again for the remaining forty-six months. Dckt. 31. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on July 2, 2018. Dckt. 38. He notes that Debtor has misstated what plan payments have actually been made. According to the Chapter 13 Trustee's records, Debtor paid $390.00 for the first two months, then $0.00 for month three, then $390.00 for month four, then $0.00 for month five, and then $390.00 for months six through eight. The Modified Plan proposes that $0.00 be paid during months seven and eight.

RULING

The Chapter 13 Trustee's only ground for opposing is that Debtor has presented plan payments made so far that do not reflect what has actually been paid. That appears to be a matter that can be corrected. At the hearing, **Debtor proposed that Section 7.01 be amended to state that $2,340.00 has been paid through February 2018.**

The Modified Plan, as amended to state in Section 7.01 that $2,340.00 has been paid through February 2018, 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 Megan Carr ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on May 22, 2018, **as amended to state in Section 7.01 that $2,340.00 has been paid through February 2018**, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick ("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.

22. **14-23440-E-13** **TOSHIBA FRANCOIS** **MOTION TO MODIFY PLAN**
PGM-3 **Peter Macaluso** **5-28-18 [73]**

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

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

Sufficient 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 28, 2018. By the court's calculation, 50 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is denied.

Toshiba Francois ("Debtor") seeks confirmation of the Modified Plan because of a change in circumstances from graduating college and recently finding full-time employment. Dckt. 75. The Modified Plan proposes that the missed payments of approximately six months under the previous plan be forgiven and that plan payments of $430.00 resume as of June 2018 for eleven months. Dckt. 73. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on July 2, 2018. Dckt. 82. The Chapter 13 Trustee asserts that Debtor is $430.00 delinquent (June 2018) in plan payments, which represents one month of the modified plan payment. Dckt. 77. Under the modified plan, the total payment due is $8,710.00, and Debtor has paid a total of $8,280.00. Dckt. 82. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

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 Toshiba Francois ("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.

23. **18-22140-E-13** **ESTELLA ACEVEDO** **OBJECTION TO CONFIRMATION OF**
DPC-1 **Michael Hays** **PLAN BY DAVID P. CUSICK**
6-18-18 [41]

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 June 18, 2018. By the court's calculation, 29 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. Estella Acevedo ("Debtor") has not made any of the required plan payments.

B. Debtor may not be able to make the plan payments required.

The Chapter 13 Trustee's objections are well-taken. The Chapter 13 Trustee asserts that Debtor is $893.00 delinquent in plan payments, which represents one(the first) month of the $893.00 plan payment. Before the hearing, another plan payment of $893.00 was due on June 25, 2018. 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 may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). On line 8h of Schedule I, Debtor lists "other monthly income" of $500.00 per month as "assistance from relative" but has failed to provide a Declaration in support of that income. Dckt. 23. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by 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 the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

24. **18-21247-E-13** **CHARLES HERNANDEZ** **MOTION TO CONFIRM PLAN**
SLE-1 **Steele Lanphier** **6-4-18 [43]**

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 May 24, 2018. FN.1. By the court's calculation, 54 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

FN.1. While the Certificate of Service filed indicates an execution date of April 25, 2018, all other documents filed, including the Amended Plan, Declaration, and Notice of Hearing, have a date of May 24, 2018. The court has calculated the notice provided based on the date of May 24, 2018. Dckt. 43–47.

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.

Charles Hernandez ("Debtor") seeks confirmation of the Amended Plan because Debtor was not timely in turning in a profit and loss statement to Debtor's counsel, and Debtor's income has now changed. Dckt. 45. The Amended Plan calls for $4,380.00 to have been paid so far with plan payments of $2,634.00 to begin June 2018 for the remainder of the plan term. Dckt. 46. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. FN.1.

FN.1. The "Motion" filed by Debtor is sixteen pages in length, well in excess of what one expects to see for such a "routine" motion to confirm an amended plan. This is because Debtor has attached fourteen pages of exhibits to the Motion. As counsel well knows, this violates the Local Bankruptcy Rules regarding the preparation and filing of documents in this District. The motion, points and authorities, each declaration, and the exhibits (which may be combined into one exhibit document) must be filed as separate pleadings. LOCAL BANKR. R. 9004-1, 9004-2. Failure to so properly prepare and file documents may result in the

imposition of sanctions or the striking of the documents. Though the court does not impose sanctions or strike the pleading, *this time*, counsel should not presume that such waiver of the Rules is his prerogative. Additionally, given counsel's knowledge and experience in this District, it causes the court to question who (possibly a non-lawyer paralegal) prepared the document and affixed counsel's signature to the pleading.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on June 26, 2018. Dckt. 51. 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's non-exempt equity totals approximately $44,238.00, and the plan estimates unsecured debt at $15,773.00. Dckt. 46.

While Debtor has reported non-exempt equity in the amount of $74,894.00, less the Estimated Chapter 7 Administrative Expense of $31,889.70, the remaining non-exempt equity is approximately $43,004.30. Dckt. 43, Exhibit A attached as an exhibit to the Motion. Debtor has listed general unsecured debt of $8,773.00 and estimated Trustee Compensation of $6,994.70. *Id*. Debtor has listed an estimated unsecured total of $15,773.00. Dckt. 46. Debtor is proposing a ten percent dividend to unsecured claims, but it appears that equity exists in excess of the unsecured claims. Dckt. 43. Debtor has not explained how, under the proposed plan and the schedules filed under penalty of perjury, the unsecured claimants are entitled to a ten percent dividend when there may be upward of $43,004.30 in non-exempt equity.

Also, the Exhibit A attached to the Motion does not provide any information about what Debtor has included in $31,889.70 in administrative expenses for the Chapter 7 liquidation. Debtor does state that the $6,994.70 in Trustee's fees is computed on the estate having $74,894.00 to administer.

Debtor's Declaration, Dckt. 45, is devoid of any information as to how he has come to his determination of the liquidation analysis. Rather, it merely tells the court to go read Exhibit A. It appears that this expense represents the costs of sale to liquidate Debtor's residence in which there is a substantial equity in excess of his $100,000 homestead exemption.

Amended Schedules I and J

Debtor filed Amended Schedules I and J on June 4, 2018. Dckt. 41. On Schedule I, Debtor states that he is self-employed with monthly net business income of $4,097.00. Dckt. 41 at 1–2. Debtor has provided the required profit and loss statement showing the gross income and expenses of Debtor in computing his monthly net self-employment income. *Id.* at 3–4.

On Amended Schedule J, Debtor states that he has two dependents—a teenage son and his mother. *Id.* at 5. No income (even Social Security) or contribution is shown on Amended Schedule I for the dependent mother who is included in the expenses on Schedule J. While Amended Schedule J has some (or lack of) questionable expenses (such as no vehicle insurance), there is a huge glaring absence of any federal income taxes, state income taxes, self-employment taxes, or other amounts relating to Debtor's income. Debtor offers no explanation as to why he is exempted from the federal and state tax laws,

including the obligation to pay self-employment taxes (a tax that lawyers are very familiar with, whether as a solo practitioner a partner in a law firm.

Based on the financial information provided by Debtor under penalty of perjury, it appears that monthly plan payments of $2,634 are well in excess of his financial ability. Schedule J appears to be a fanciful (inaccurate) MAI (made as instructed) set of fictional expenses to achieve the pre-conceived necessary monthly net income number to create the illusion that Debtor can perform the Plan.

The Chapter 13 Trustee also notes what he believes is a scrivener's error in Section 7 of the Amended Plan. The Amended Plan calls for $4,380.00 to be paid in so far, but the Chapter 13 Trustee asserts that such amount would make Debtor be ahead in plan payments by $450.00. He argues that the amount paid in should read $4,830.00.

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 Charles Hernandez ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Confirm the Amended Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

25. **17-27751-E-13** **MISAEL/LUZ BAUTISTA** **CONTINUED MOTION TO DISGORGE FEES**
DPC-3 **Harry Roth** **3-16-18 [109]**

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, and Office of the United States Trustee on March 16, 2018. By the court's calculation, 39 days' notice was provided. 28 days' notice is required.

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

The Motion to Disgorge Fees is granted.

David Cusick ("the Chapter 13 Trustee") moves the Court for an order disgorging Harry Roth's ("Attorney") attorney fees in this case pursuant to 11 U.S.C. § 329. The Chapter 13 Trustee argues that this case is not being prosecuted actively, and the amount charged in attorney's fees may be unreasonable.

The Chapter 13 Trustee targets several deficiencies in this case. First, Statement of Financial Affairs does not disclose the date that Attorney was paid $4,000.00 for services in this case. Dckt. 19.

Second, the Chapter 13 Trustee argues that fees should be disgorged because the case was skeletal when filed on November 28, 2017; the schedules, Statement of Financial Affairs, Plan, Attorney Disclosure Statement or Rights and Responsibilities were not filed until December 12, 2017, and were dated December 6, 2017. The Chapter 13 Trustee notes that the case was even dismissed on December 18, 2017, until reinstated after a motion by Attorney.

Third, a motion for relief was filed on December 1, 2017, asserting grounds for an unlawful detainer action in state court. The plan in this case, though, was premised on Misael Bautista and Luz Bautista ("Debtor") owning the contested real property, which would require an adversary proceeding to obtain possession from the current owner. Debtor even admitted that at the Meeting of Creditors.

Fourth, the Plan also provides for a claim of Honda Financial Services in Class 2 to be valued, and Debtor filed a motion to value. *See* Dckt. 53. Pleadings by Honda Financial Services indicate that the securing vehicle is leased by Debtor. The Chapter 13 Trustee is concerned that Attorney did not discuss the lease agreement with Debtor and filed the motion to value after learning that the vehicle was leased, not purchased.

APRIL 24, 2018 HEARING

At the hearing, the court noted that Attorney filed an untimely declaration in opposition to the Motion. *See* Dckt. 117. The court noted that Attorney offers no excuses for the delays, but he requests additional time, further stating that he is acting to get an adversary proceeding filed but has been taking longer than anticipated because of addressing legal theories. Dckt. 119. The court continued the hearing to 3:00 p.m. on June 26, 2018, for Debtor and Attorney to have time to reactivate prosecution of this case. Dckt. 120.

ATTORNEY'S OPPOSITION

Attorney filed an Opposition on June 25, 2018. Dckt. 127. Attorney argues that the grounds are spelled out in his declaration, but he summarizes them as being that a contract is not yet complete and that the fees and time spent in this case are sufficient to justify what has been charged.

The Declaration provides more detail, including that Attorney asked Debtor for a retainer of $5,000.00 for costs and fees for all matters that were ancillary to this bankruptcy case. He states that additional fees were contingent upon success and were not due until the case was completed.

Attorney details the ways in which this proceeding has been longer than for a usual case (e.g., conversations longer because of interpreting languages, state court unlawful detainer). Attorney discloses that the biggest hurdle in this case was filing a plan, motion to confirm, and adversary proceeding; he states that he could not file them in good faith and states that he will elaborate further if the court wishes. Dckt. 128 at 4:4–8.

JUNE 26, 2018 HEARING

At the hearing, the court continued the matter to 3:00 p.m. on July 17, 2018. Dckt. 130.

APPLICABLE LAW

The court has the authority, and responsibility, to consider attorney's fees obtained or to be paid prior to or during a bankruptcy case. 11 U.S.C. §§ 329, 330, 331; *see also Law Offices of Nicholas A. Franke v. Tiffany (In re Lewis)*, 113 F.3d 1040, 1045 (9th Cir. 1997). Fees in excess of the reasonable value of such services may be ordered repaid. *See In re Lawas*, No. 13-33513-E-13, 2014 Bankr. LEXIS 623 (Bankr. E.D. Cal. Feb. 12, 2014). The application of 11 U.S.C. § 329 and the Federal Rules of Bankruptcy Procedure may seem harsh, but they are necessary not only to protect vulnerable consumers and business owners, but also to protect the integrity of the federal judicial process. *See Neben & Starrett v. Charwell Fin. Corp. (In re Park-Helena Corp.)*, 63 F.3d 877, 881 (9th Cir. 1995). Debtor's counsel must lay bare all dealings regarding compensation and must be direct and comprehensive. *See Kavanagh v. Leija (In Re Leija)*, 270 B.R. 497,

501 (Bankr. E.D. Cal. 2001) (citation omitted); *In re Bob's Supermarket's, Inc.*, 146 B.R. 20, 25 (Bankr. D. Mont. 1992), *aff'd in part and rev'd in part*, 165 B.R. 339 (B.A.P. 9th Cir. 1993). The burden is on the person to be employed to come forward and to make full, candid, complete disclosure. *In re B.E.S. Concrete Products, Inc.*, 93 B.R. 228 (E.D. Cal. 1988). The federal courts are not mere devices to be used to generate fees for attorneys irrespective of any bona fide rights to be adjudicated.

RULING

Attorney filed this case without all of the required documents, and the case was actually dismissed for failure to timely file documents until Attorney brought a successful motion to vacate dismissal. *See* Dckt. 24, 32. No plan has been confirmed in this case, and the case was again dismissed on June 6, 2018. Order, Dckt. 124. The case was dismissed in June 2018, because of Debtor's defaults on payments due in this case. Civil Minutes, Dckt. 123.

The Court also notes that the proposed Plan in this case—which was denied confirmation on February 13, 2018—called for Debtor to file an adversary proceeding to recover asserted ownership of property to the extent that Debtor has such rights. No such adversary proceeding was filed in the seven months this bankruptcy case was pending. Additionally, the Plan calls for a secured claim to be valued, but as the court noted at the February 13, 2018, hearing the claim could not be valued because the underlying security agreement was a lease for a vehicle. Dckt. 85. There was no actual property of Debtor.

Here, as Attorney's Declaration notes , he (counsel) could not file an amended plan, motion to confirm, or the adversary proceeding required by the original plan because he would not have been able to do so in good faith. *See* Dckt. 128 at 4:4–8. While an attorney may make an emergency filing on little information to protect rights the client believes he or she may have, there are not substantial legal fees for such emergency filing. The attorney then conducts the due diligence investigation to determine whether he or she may continue in such representation, the accuracy of the "emergency" information provided by the client, and what must be ethically and professionally done going forward.

The Declaration appears to state that the "plan" for this case was for Debtor to obtain the return of their "home" to themselves. *Id.* at 1:29, 2:1–2. Attorney states that his "retainer" was for work in state court defending the unlawful detainer. Attorney goes further to state that he cannot communicate with his clients (neither speaking the other's language). To communicate, Attorney uses the services of a "volunteer" real estate agent to translate. *Id.*, ¶ 5, FN.1. Attorney also candidly addresses some of the shortcomings.

Local Bankruptcy Rule 2016-1(c)(4) states:

> If an attorney elects to be compensated pursuant to Subpart (c) [No-Look Fees] but the case is dismissed prior to confirmation of a plan, absent a contrary order, the trustee shall pay to the attorney, to the extent funds are available, an administrative claim equal to fifty per cent (50%) of the total fee the debtor agreed to pay less any pre-petition retainer. The attorney shall not collect, receive, or demand additional fees from the debtor unless authorized by the Court.

This case was filed on November 28, 2017, and was dismissed on June 6, 2018. *See* Dckt. 1, 124. Between those dates, no plan was confirmed. The one proposed plan states that Attorney was electing to

receive No-Look Fees under Local Bankruptcy Rule 2016-1(c) in the maximum amount of $4,000.00. Dckt. 21. There is no disclosure about a pre-petition arrearage.

On the Disclosure of Compensation of Attorney for Debtor(s), Dckt. 19 at 50, Attorney certified under penalty of perjury that "the foregoing is a complete statement of any agreement or payment for payment to me for representation of debtor(s) in this bankruptcy proceeding." The Certification of the complete statement of terms is that:

A. Attorney agreed to accept as payment for the bankruptcy;

B. Fees of $4,000;

C. Of which $4,000 was paid prior to the filing of the statement;

D. Additionally, $310.00 was paid to counsel for the bankruptcy filing fees; and

E. The source of the $4,310.00 was paid to Attorney by Debtor.

Id.

In substance, Attorney's argument is that he had elected to provide other legal services, that he does not have more money than the $4,000.00, so the $4,000.00 he certified was solely for bankruptcy fees really was for, and have been diverted to, other work.

In reading the pleadings and considering counsel's good reputation, it appears that this decision falls under the "no good deed goes unpunished" adage. Attorney could not communicate directly with his client, and it is clear that effective communication was difficult. (It also puts into question the actual knowledge of Debtor for everything submitted under penalty of perjury.) The work snowballed and Debtor/Attorney could not effectively use the bankruptcy process to assert and adjudicate the asserted rights of Debtor and the bankruptcy estate.

The inability of Debtor and counsel to prosecute this bankruptcy case is reflected in the court's ruling on the Motion for Relief from the Automatic Stay in which the disputed owner of the real property sought relief to proceed with the unlawful detainer. As addressed in the Civil Minutes, Dckt. 67, though Debtor and counsel promised to file an opposition to the Motion for Relief, they did not. They promised to file an adversary proceeding to assert the estate's interest in the Property. They did not. Instead, it appears that they elected to "bang around" in state court on the unlawful detainer sideshow rather than the bankruptcy main events—the Chapter 13 Plan (for which counsel was paid $4,000) and the adversary proceeding.

The Motion before this court is to address the fees paid to Attorney for the bankruptcy case. Those fees are $4,000.00, as certified by Attorney. It is not for the court to equitably reallocate the fees to other work being done for the non-English speaking Debtor by their non-Spanish speaking Attorney. The court will limit the issues to that. To the extent that Attorney refunds monies paid for bankruptcy fees to

Debtor, if Debtor chooses, after the refund has been deposited in Debtor's bank account, to make a new payment for non-bankruptcy services to Attorney, such is Debtor's right.

According to the fee provisions that Attorney elected to accept and the Local Bankruptcy Rules, he is allowed to be paid only $2,000.00 in fees in this case, which is half of the maximum in no-look fees for a case that is dismissed before plan confirmation. Attorney has been paid, and wants to keep, $4,000.00 in fees paid.

The Motion is granted, and Attorney shall disgorge $2,000.00 back to Debtor.

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 Disgorge Attorney Fees 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 Motion is granted, and Harry Roth ("Attorney") is ordered to disgorge $2,000.00 of attorney's fees in this case. Attorney shall pay the $2,000.00 to the Chapter 13 Trustee on or before July 24, 2018. The Chapter 13 Trustee shall disburse the $2,000.00 received from Attorney directly to Misael Bautista and Luz Bautista ("Debtor").
>
> **IT IS FURTHER ORDERED** that on or before August 15, 2018, Attorney shall file with this court his Declaration attesting to the $2,000.00 refund and a copy of the cancelled check showing deposit of the refund by Debtor into Debtor's bank account. Upon review, the Chapter 13 Trustee (the prevailing party on this Motion) shall file his certification of the refund documentation being filed, or file a motion seeking such supplemental relief, including sanctions, for the failure of Attorney to comply with this order for refund of fees to Debtor.

26. **13-23157-E-13 RHS-1** | **HOSSEIN BAKTVAR AND LALEH MOGHADAM** **Peter Macaluso** | **ORDER TO SHOW CAUSE** **6-6-18 [127]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on June 9, 2018. By the court's calculation, 38 days' notice was provided. The court set the hearing for 3:00 p.m. on July 17, 2018. Dckt. 127.

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

The Order to Show Cause is sustained.

Hossein Baktvar and Laleh Moghadam, the Chapter 13 Debtor, ("Debtor") commenced this bankruptcy case on March 3, 2013. They have labored through five years of payments, with their stated projected disposable income so limited that they were unable to make any dividend disbursement to the creditors holding $337,721.00 in general unsecured claims (amount of unsecured claims stated by Debtor in Plan ¶ 2.15, Dckt. 5). This does not appear to include a Class 2 secured claim of $160,000.00 that was valued as a $0.00 secured claim for purposes of obtaining a "lien strip." The Chapter 13 Plan could be funded with only $560.00 per month after payment of Debtor's necessary expenses. Plan ¶ 1.01, Dckt. 5.

While having only $560.00 per month in projected disposable income, the "necessary" expenses for Debtor (monthly expenses and as permitted under the Bankruptcy Code for secured claims) include the following:

Mercedes Benz Payment.....$ 392 Plan ¶ 2.09(d)

Monthly Mortgage Payment.....$3,437
Plan ¶ 2.11 (one of four cars Schedule B, Dckt. 1)

Food and Housekeeping Supplies...$1,100 Schedule J, Dckt. 1

In looking at Schedule J and the attached statement of gross income and expenses from Debtor's business, the court notes that Debtor makes no provision for payment of any income or self-employment taxes on $28,600.00 of monthly gross business income. On Schedule J, Debtor states there are $22,700.00 of monthly expenses, yielding $5,900.00 of monthly net income from their business. But Debtor states, under penalty of perjury, that Debtor does not have to pay any federal income tax, federal self-employment tax, or state income tax. Schedule J and Business Income and Expenses attachment, Dckt. 1 at 34–36; Dckt.1. This statement under penalty of perjury appears to be questionable, if not outright intentionally false.

This financial information, provided under penalty of perjury, clearly shows that Debtor should not have had an "extra" $15,000.00 to secretly make a "settlement" payment without court approval. This is true even without making any provision for payment of federal income and self-employment taxes, and state income taxes.

Failure to Comply with Order and Pending Dismissal of Case

In September 2017, Trulite WSG, LLC ("Creditor") filed a Motion for Administrative Expense, seeking payment of $60,387.45 for materials purchased by Debtor in 2013. Motion, Dckt. 67. It is alleged in the Motion that Debtor obtained post-petition credit from Creditor without notifying Creditor that Debtor was in bankruptcy. *Id.* It is further alleged that Debtor was using the name of a suspended corporation in some of these transactions.

Debtor had counsel file an Opposition to the Motion for Administrative Expense, but Debtor failed (or refused) to provide any testimony of the alleged (mis)conduct. Opposition, Dckt. 92. In the "Opposition," counsel for Debtor only argued that "it is the belief of Debtor" that the amount of the obligation was only $26,111.46. No explanation was given as to why Debtor would have only a "belief" and not have books and records from which to correctly compute the amount undisputedly owed.

The court determined that the amount of the administrative expense to be allowed under 11 U.S.C. § 503(b) was $35,033.31. Order, Dckt. 98.

Agreement of Debtor to Pay $16,200.00

At the hearing on the Chapter 13 Trustee's Motion to Dismiss, Debtor's counsel continued in the contention that Debtor tried to get the money from Creditor with whom he previously settled, but Debtor was unable to get the monies. Facing the dismissal, Debtor's counsel opined that Debtor would think about other ways to comply with the court's order. This caused the court to go back and review with counsel not only the prior order, but also the court's Civil Minutes from the prior hearing on the Motion to Approve the Compromise (which Debtor had paid, without court approval, years earlier in this Bankruptcy Case).

Some of the key findings of the court for the order issued approving the Compromise and what Debtor was ordered to do stated in the Civil Minutes include the following:

> In his declaration, debtor Hossein Baktvar states under penalty of perjury that he has settled this adversary proceeding, **prior to court approval**, by **making a $15,000.00** from monies in his business. Declaration ¶ 2, Dckt. 109. With this settlement, he states that he can then buy more materials in the future. Further, he states that he needed this money to work on future projects, and he "hopes" that he will not need such monies until he has "recouped these funds and/or get a deal on inventory as I paid [reflecting a past payment of the $15,000] him off." *Id.*
>
> **Schedule B does not show Debtor having an "extra" $15,000.00 in "working capital" lying around.** The Motion and Declaration **raise concerns that Debtor actually has $15,000.00+ in additional profits not disclosed to the court.** Debtor's Plan, based on **Debtor's dire finances committed to making only a 0.00% dividend to creditors holding general unsecured claims**. But, **Debtor** did have enough projected disposable income (based on the financial information provided under penalty of perjury) to **make the monthly payment on his Mercedes Benz, residence (a "necessary" $3,437.00** monthly payment), and Debtor's nondischargeable tax obligation to the California EDD. Plan, Dckt. 5.

Civil Minutes, Dckt. 118 at 2–3 (emphasis added).

> **Consideration of Additional Issues**
>
> The court is presented with a difficult situation. Here, Debtor operated its business, obtained product, and did not pay its expenses during the early stages of this case. **Debtor obtained the product and appears to have had higher "profits" by not paying its current expenses.**
>
> Now, even though Debtor is purporting to fund the Chapter 13 Plan with Debtor's projected disposable income, **Debtor has an "extra" $15,000.00 to pay Trulite. The statement that there was $15,000.00 of "working capital" lying around is not adequate.**
>
> **At the hearing, the Debtor agreed to pay $16,200.00 to the Chapter 13 Trustee** ($15,000.00 settlement amount and additional Chapter 13 Trustee expenses estimated at 8%), with the settlement payment of $15,000.00 to be made through the Chapter 13 Trustee.
>
> Upon weighing the factors outlined in A & C Props and Woodson, the circumstances surrounding the creation of this post-petition obligation, and the information concerning the ability of Debtor to have the "extra" $15,000.00 of "working capital" to have paid the settlement before it was approved by the court, the court determines that the settlement is granted.

Id. at 5.

It is important to note that at the hearing Debtor agreed to make the $15,000.00 payment to the Chapter 13 Trustee, plus the additional amount for the projected Trustee's fees. There was not an "agreement" for Debtor to try to recover $15,000.00 from Creditor, then if and when (at some non-specific date) Debtor was able to obtain them, if ever, during the sixty (60) months of the Plan or for an indeterminate period thereafter.

The court's order is clear and unequivocal in ordering Debtor to pay the $15,000.00, unconditionally, not "if" or "when:"

> **IT IS ORDERED** that the Motion for Approval of Compromise between Movant and Trulite WSG, LLC ("Settlor") is granted, to be executed as follows:
>
> (1) Debtor shall pay $16,200.00 to the Chapter 13 Trustee for the settlement to be paid through the Plan;
>
> (2) the Chapter 13 Trustee shall disburse $15,000.00 to Trulite WSG, LLC as payment in full of the settlement amount approved by this court; and
>
> (3) the remaining $1,200.00 shall be used to pay the Trustee's administrative expenses and any remaining monies disbursed through the Plan to creditors.

Order, Dckt. 119. Believing Debtor committing to making the payment, as communicated through his attorney, the court did not set a date by which the payment was required, nor did the court give Debtor a period before which payment was required.

Though facing dismissal as posted in the tentative ruling for the May 30, 2018 hearing, neither of the two debtors attended the May 30 hearing. Rather, they merely sent their attorney to explain that the payment had not been made and then argue that notwithstanding Debtor's failure to comply with the court's order, the case should not be dismissed.

Unfortunately, Debtor's failure to comply with the court's prior order is now resulting in the case being dismissed, Debtor losing the ability to obtain a discharge in this case, and having wasted the attorney's fees paid and plan payments made with their (now apparently irrationally computed) projected disposable income.

While dismissal is reasonable, it is a harsh result, which is likely to spawn further litigation. Notwithstanding Debtor's cavalier attitude to Debtor's responsibilities under the Bankruptcy Code and the obligation to comply with orders of the court, the court has extended one final, final lifeline to Debtor.

Issuance of Order to Show Cause

The court took the Motion to Dismiss under submission and set it for a Submission Status Conference to be conducted in conjunction with an Order to Show Cause. Dckt. 127. The court ordered that

Hossein Baktvar and Laleh Moghadam, the Chapter 13 Debtors, and each of them appear in person at 3:00 p.m. on July 17, 2018, no telephonic appearances permitted, to show cause why the court should not enter the order dismissing this case unless Debtor immediately makes the following payments:

A. $15,000.00 by Debtor into the Plan for disbursement to creditors holding general unsecured claims;

B. $1,200.00 by Debtor into the Plan for Chapter 13 Trustee fees on the $15,000.00 payment; and

C. $1,500.00 by Debtor to the Chapter 13 Trustee for attorney's fees caused by the failure to make the promised payment, the motion to dismiss, the hearing on the motion to dismiss, and the Order to Show Cause (computed at a discounted rate of $250.00 and for only six (6) hours of time).

The court ordered that if Debtor immediately made the $15,000.00, $1,200.00 and $1,500.00 payments, the court would consider those payments in connection with the Motion to Dismiss, and then deny without prejudice the Motion to Dismiss. That would allow Debtor to complete the Plan in this case, obtain a discharge, and allow the case to be completed as if Debtor had complied with the Bankruptcy Code and prior order of this court.

Any written responses to the Order to Show Cause by Debtor were ordered to be filed and served on or before July 3, 2018.

Chapter 13 Trustee's Response

The Chapter 13 Trustee filed a Response on July 3, 2018. Dckt. 132. The Chapter 13 Trustee reports that he received a cashier's check on May 21, 2018, in the amount of $1,760.00, which he interprets as the sixtieth plan payment of $560.00 and $1,200.00 of the money ordered in the motion to approve compromise. *See* Dckt. 119.

The Chapter 13 Trustee states that he received communication from Creditor confirming that $15,000.00 was paid to Creditor directly.

Finally, the Chapter 13 Trustee notes that Debtor had scheduled $14,000.00 per month for business materials and supplies. Dckt. 1 at 36.

Debtor's Response

Debtor filed a Response on July 3, 2018. Dckt. 136. Debtor argues that Creditor has been contacted and instructed that the $15,000.00 payment it received from Debtor needs to be sent to the Chapter 13 Trustee first to comply with the court's order, but Debtor does not have any evidence that such a transfer has occurred.

Debtor argues that its proposed compromise with Creditor included terms that the $15,000.00 would be held in trust until court approval of the settlement, and upon payment, Creditor would withdraw its administrative expense claim.

Debtor states that $1,200.00 was paid to the Chapter 13 Trustee and that $1,500.00 will be paid to the Chapter 13 Trustee for his attorney's fees before the hearing on the Order to Show Cause.

Ruling

From the pleadings submitted by the parties, especially by Debtor, it appears that Debtor has not complied with the court's order. Only one of the three payments has been made—a payment of $1,200.00 to the Chapter 13 Trustee. Debtor has not provided $15,000.00 to the Chapter 13 Trustee for disbursement under the plan, and Debtor has not paid $1,500.00 to the Chapter 13 Trustee for attorney's fees.

Therefore, the Order to Show Cause is sustained, and the court shall enter a separate order as part of the Chapter 13 Trustee's motion to dismiss dismissing Debtor's bankruptcy case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Order to Show Cause 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 Order to Show Cause is sustained, and the court shall issue a separate order as part of David Cusick's ("the Chapter 13 Trustee") motion to dismiss Chapter 13 bankruptcy case 13-23157.

27.	**13-23157-E-13 DPC-5**	**HOSSEIN BAKTVAR AND LALEH MOGHADAM Peter Macaluso**	**STATUS CONFERENCE RE: MOTION TO DISMISS CASE 4-20-18 [120]**

Debtors' Atty: Peter G. Macaluso

The Status Conference is xxxxxxxxxx.

Notes:
Set by order of the court filed 6/6/18 [Dckt 129]. Status conference to be conducted in conjunction with the hearing on the Order to Show Cause.

SUMMARY OF MINUTES FROM MAY 30, 2018 HEARING

David Cusick ("the Chapter 13 Trustee") seeks dismissal of the case on the basis that Hossein Baktvar and Laleh Moghadam ("Debtor") are $560.00 delinquent in plan payments, which represents one month of the $560.00 plan payment. The delinquent payment is for March 2018, the sixtieth month of the Plan. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Additionally, the Chapter13 Trustee argues that Debtor has not complied with the court's order to pay $16,200.00 to the Chapter 13 Trustee, delaying the Chapter 13 Trustee from complying with the same order and from disbursing $15,000.00 to Trulite WSG, LLC ("Creditor"). *See* Dckt. 119.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on May 16, 2018. Dckt. 124. Debtor's counsel argues in the Opposition that: (1) Debtor promises to cure the delinquency before the hearing date; (2) Debtor paid directly the $15,000.00 (choosing to violate this court's Order filed on March 12, 2018); and (3) the court should just continue the hearing. Debtor has chosen not to (or refuses to) provide a declaration as evidentiary support for counsel's arguments.

Debtor's counsel argues that Debtor had paid the $15,000 to the creditor even before the Motion to Approve the Compromise (for the Creditor to be paid $15,000) was filed. Opposition ¶ 2, Dckt. 124. However, as shown in the Civil Minutes from the hearing on the Motion to Approve Compromise:

> "At the hearing, the Debtor agreed to pay $16,200.00 to the Chapter 13 Trustee ($15,000.00 settlement amount and additional Chapter 13 Trustee expenses estimated at 8%), with the settlement payment of $15,000.00 to be made through the Chapter 13 Trustee."

Civil Minutes, Dckt. 118.

Debtor has not done as ordered or as committed to at the hearing on the earlier Motion. Rather, Debtor offers the excuse that the money has not been paid by someone else.

Debtor requests that the hearing be continued while they coordinate payment of the settlement funds to the Chapter 13 Trustee.

RULING

Unfortunately for Debtor, a promise to pay is not evidence that resolves the Motion. Further, Debtor's conduct in this case has raised serious questions.

Failure to Make $15,000 Payment to Trustee

At the hearing, Debtor's counsel continued in the contention that Debtor tried to get the money from Creditor with whom he previously settled. Facing the dismissal, Debtor's counsel opined that Debtor would think about other ways to comply with the court's order. This caused the court to go back and review with counsel not only the prior order, but reviewed the court's Civil Minutes from the prior hearing on the Motion to Approve the Compromise (which Debtor had paid, without court approval, years earlier in this Bankruptcy Case.

Some of the key findings of the court for the order issued approving the Compromise and what Debtor was ordered to do stated in the Civil Minutes include the following:

> In his declaration, debtor Hossein Baktvar states under penalty of perjury that he has settled this adversary proceeding, **prior to court approval**, by **making a $15,000.00** from monies in his business. Declaration ¶ 2, Dckt. 109. With this settlement, he states that he can then buy more materials in the future. Further, he states that he needed this money to work on future projects, and he "hopes" that he will not need such monies until he has "recouped these funds and/or get a deal on inventory as I paid [reflecting a past payment of the $15,000] him off." *Id.*
>
> **Schedule B does not show Debtor having an "extra" $15,000.00 in "working capital" lying around.** The Motion and Declaration **raise concerns that Debtor actually has $15,000.00+ in additional profits not disclosed to the court.** Debtor's Plan, based on **Debtor's dire finances committed to making only a 0.00% dividend to creditors holding general unsecured claims**. But, **Debtor** did have enough projected disposable income (based on the financial information provided under penalty of perjury) to **make the monthly payment on his Mercedes Benz, residence (a "necessary" $3,437.00** monthly payment), and Debtor's nondischargeable tax obligation to the California EDD. Plan, Dckt. 5.

Civil Minutes, Dckt. 118 at 2–3 (emphasis added).

Consideration of Additional Issues

The court is presented with a difficult situation. Here, Debtor operated its business, obtained product, and did not pay its expenses during the early stages of this case. **Debtor obtained the product and appears to have had higher "profits" by not paying its current expenses.**

Now, even though Debtor is purporting to fund the Chapter 13 Plan with Debtor's projected disposable income, **Debtor has an "extra" $15,000.00 to pay Trulite. The statement that there was $15,000.00 of "working capital" lying around is not adequate.**

At the hearing, the Debtor agreed to pay $16,200.00 to the Chapter 13 Trustee ($15,000.00 settlement amount and additional Chapter 13 Trustee expenses estimated at 8%), with the settlement payment of $15,000.00 to be made through the Chapter 13 Trustee.

Upon weighing the factors outlined in A & C Props and Woodson, the circumstances surrounding the creation of this post-petition obligation, and the information concerning the ability of Debtor to have the "extra" $15,000.00 of "working capital" to have paid the settlement before it was approved by the court, the court determines that the settlement is granted.

Id. at 5.

It is important to note that at the hearing Debtor agreed to make the $15,000 payment to the Chapter 13 Trustee, plus the additional amount for the projected Chapter 13 Trustee's fees. There was not an "agreement" for Debtor to try to recover $15,000 from Creditor, then if and when (at some non-specific date) Debtor was able to retain, if ever during the sixty (60) months of the Plan.

The court's order is clear and unequivocal in ordering Debtor to pay the $15,000, unconditionally, not "if" or "when:"

IT IS ORDERED that the Motion for Approval of Compromise between Movant and Trulite WSG, LLC ("Settlor") is granted, to be executed as follows:

(1) Debtor shall pay $16,200.00 to the Chapter 13 Trustee for the settlement to be paid through the Plan;

(2) the Chapter 13 Trustee shall disburse $15,000.00 to Trulite WSG, LLC as payment in full of the settlement amount approved by this court; and

(3) the remaining $1,200.00 shall be used to pay the Trustee's administrative expenses and any remaining monies disbursed through the Plan to creditors.

Order, Dckt. 119. Believing Debtor committing to making the payment, as communicated through his attorney, the court did not set a date by which the payment was required, nor did the court give Debtor a period before which payment was not required.

Though facing dismissal as posted in the tentative ruling for the May 30, 2018 hearing, neither of the two debtors attended the May 30 hearing. Rather, they merely sent their attorney to explain that the payment had not been made but that the case should not be dismissed.

Potential Prejudice to Debtor and Counsel with Dismissal of Case

Debtor commenced this bankruptcy case on March 3, 2013. They have labored through five years of payment, unable to make any dividend to the creditors holding $337,721.00 in general unsecured claims (amount of unsecured claims stated by Debtor in Plan ¶ 2.15, Dckt. 5). This does not appear to include a Class 2 secured claim of $160,000, which was valued as a $0.00 secured claim for purposes of obtaining a "lien strip." The Chapter 13 Plan could be funded with only $560 per month after payment of Debtor's necessary expenses. Plan ¶ 1.01, Dckt. 5.

While having only $560 per month in projected disposable income, the "necessary" expenses for Debtor (monthly expenses and as permitted under the Bankruptcy Code for secured claims) include the following:

Mercedes Benz Payment.....	$ 392	Plan ¶ 2.09(d)
Monthly Mortgage Payment.....	$3,437	Plan ¶ 2.11 (one of four cars Schedule B, Dckt. 1)
Food and Housekeeping Supplies...	$1,100	Schedule J, Dckt. 1

In looking at Schedule J and the attached statement of gross income and expenses from Debtor's business, the court notes that Debtor makes no provision for payment of any income or self-employment taxes on $28,600 of monthly gross business income. On Schedule J, Debtor states there are $22,700 of monthly expenses, yielding $5,900 of monthly net income. But Debtor states, under penalty of perjury, that Debtor does not have to pay any federal income tax, federal self-employment tax or state income tax. Schedule J and Business Income and Expenses attachment, Dckt. 1 at 34–36. This statement under penalty of perjury appears to be questionable, if not outright intentionally false.

This financial information, provided under penalty of perjury, clearly shows that Debtor should not have had an "extra" $15,000 to secretly make a "settlement" payment without court approval. This is true even without making any provision for payment of federal income and self-employment taxes, and state income taxes.

Unfortunately, Debtor's failure to comply with the court's prior order is now resulting in the case being dismissed, Debtor losing the ability to obtain a discharge in this case, and having wasted the attorney's fees paid and plan payment made with their (now apparently irrationally computed) projected disposable income.

While dismissal is reasonable, it is a harsh result, which is likely to spawn further litigation. Notwithstanding Debtor's cavalier attitude to Debtor's responsibilities under the Bankruptcy Code and the obligation to comply with orders of the court, the court will extend one final, final lifeline to Debtor.

Therefore, the court takes this Motion under submission and sets it for a Submission Status Conference to be conducted in conjunction with an Order to Show Cause. The OSC shall be for the Debtor to show cause why the court should not allow the Debtor move the plan to completion by the payment of:

> $15,000.00 by Debtor into the Plan for disbursement to creditors holding general unsecured claims
>
> $ 1,200.00 by Debtor into the Plan for Chapter 13 Trustee fees on the $15,000 payment
>
> $1,500.00 by Debtor to the Chapter 13 Trustee for attorney's fees caused by the failure to make the promised payment, the motion to dismiss, the hearing on the motion to dismiss, and the Order to Show Cause (computed at a discounted rate of $250 and for only six (6) hours of time.
>
> $ 999.99 by Peter Macaluso, Esq., counsel for Debtor, to the Clerk of the Court as civil corrective sanctions for having represented to the court the agreement for Debtor to pay the $15,000.00, filing an Opposition premised on Debtor not making the payment promised by counsel because "he couldn't get it back from Creditor," not providing any evidence with the Opposition, and seeking a continuance after the sixty months of the plan had expired so Debtor could "figure out" how to address the failure to comply with the court's prior order (for which counsel argued that there was a "condition" of getting the payment from Creditor).

If Debtor immediately makes the $15,000.00, $1,200.00 and $1,500 payments, the court can consider that in connection with the Motion to Dismiss, and then deny without prejudice the Motion to Dismiss. This would allow Debtor to complete the Plan in this case, obtain Debtor's discharge, and allow the case to be completed as if Debtor had complied with the Bankruptcy Code and prior order of this court.

UPDATE AFTER SUBMISSIONS ON ORDER TO SHOW CAUSE

The pleadings submitted for the Order to Show Cause issued in this matter indicate that Debtor has not complied with the court's order and has not made all of the required payments. The court conducted the hearing on the Order to Show Cause on July 17, 2018, and concluded that it be sustained and that a separate order be entered dismissing this bankruptcy case pursuant to the Chapter 13 Trustee's motion to dismiss.

Pursuant to the court's ruling on the Order to Show Cause, 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 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 Motion to Dismiss is granted, and the case is dismissed.

28. 18-23464-E-13 PGM-1 | **CYNTHIA PAYSINGER** **Peter Macaluso** | **CONTINUED MOTION TO EXTEND AUTOMATIC STAY** **6-12-18 [10]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on June 12, 2018. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The Motion to Extend the Automatic Stay is denied.

Cynthia Paysinger ("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. 16-20016) was dismissed on December 8, 2017, after Debtor failed to make plan payments. *See* Order, Bankr. E.D. Cal. No. 16-20016, Dckt. 59, December 8, 2017. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because she had difficulty with her finances after she became disabled, retired, and received half of the income she was accustomed to receiving. Dckt. 12.

Debtor provides a very skeletal declaration supporting the Motion. She testifies:

A. She became disabled, retired, and now has only half (a non-specified amount) of her prior income. Declaration ¶ 1, Dckt. 12.

B. Her circumstances have changed, stating that "My son and his girlfriend live with me now and are assisting with financial obligations since I will be leaving home to them." Declaration ¶ 4.

C. "I have hired attorney, Peter Macaluso, and I am confident of his ability to represent me and propose a solid Chapter 13 Plan that will allow me to pay my creditors to the best of my ability."

Other than some fragmented facts (son and girlfriend will now live with Debtor, and possibly be subsidized by Debtor) and that her income is half of what it was before, the Declaration consists merely of Debtor's personal conclusion that she will prosecute this case.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee filed an Opposition on June 13, 2018. Dckt. 14. The Chapter 13 Trustee states that this case's filing is incomplete. He notes that the remaining documents are due on June 15, 2018, but he cannot determine if there has been a change in circumstances since the prior case.

JUNE 26, 2018 HEARING

At the hearing, the court extended the automatic stay on an interim basis through July 17, 2018, and set this matter for final hearing on July 17, 2018. Dckt. 24.

DISCUSSION

No further pleadings have been filed since the June 26, 2018 hearing.

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.

Review of Plan and Financial Information

On June 13, Debtor filed the missing documents that had not been submitted with this skeletal filing. *See* Dckt. 17–19. The Plan calls for payments of $2,290.00 per month for sixty months, with a 0.00% dividend to unsecured claims. Dckt. 17. Class 1 includes Wells Fargo Bank, N.A. with arrears of $29,000.00 and 0.00% interest being paid on the arrears. Despite listing Wells Fargo in Class 1—appearing to be for a mortgage—Schedule J does not include any expenses for real estate taxes, homeowner's insurance, home maintenance, or homeowner's association dues. Dckt. 19. Schedule J also includes a mysterious entertainment expense of $2.00.

On Schedule I, Debtor lists income from employment, Social Security, and $1,000.00 per month from her son and daughter in law. Dckt. 19 at 26. No testimony is provided how Debtor's son and "daughter in law" can pay $1,000.00 per month. No declaration from either is provided.

On Schedule J, Debtor fails to provide (states under penalty of perjury that she has $0.00 of) for the payment of any expenses for repair, maintenance, and upkeep of the residence that she seeks to keep. Dckt. 19 at 27. Debtor purports to have only $200 per month in expenses for food and housekeeping supplies. *Id.* at 28. Allowing $50 per month for housekeeping expenses, that would leave only $1.66 per meal in a thirty day month for Debtor. No evidence is provided that this Debtor can properly provide to feed herself for $1.66 per meal.

For her transportation expense (gas, repairs, and maintenance), Debtor states under penalty of perjury that she has expenses of only $225 per month. *Id.* On Schedule B, Debtor lists having a 2003 Honda with 285,000 miles on it. *Id.* at 4. A vehicle of such an age and mileage commonly requires significant annual repair expenses. If the court allows only $50 per month for repairs and maintenance, there is only $175 per month for gas. Assuming $3.85 per gallon, Debtor could purchase only 45 gallons per month. Assuming an average of 25 miles per gallon, that gives Debtor the ability to drive (for work and pleasure) only 37 miles per day in a thirty-day month.

Debtor has not sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay. Debtor has not explained to the court what went

wrong financially in her prior case that has been addressed before filing this current case. Instead, the court's review of the filed documents indicates that Debtor may be manufacturing (or ignoring) her expenses to achieve a desired outcome.

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 Extend the Automatic Stay filed by Cynthia Paysinger ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied, and the automatic stay, as it applies to Debtor is not extended pursuant to 11 U.S.C. § 362(c)(3)(B). This order does not address the automatic stay under 11 U.S.C. § 362(a) as it applies to the bankruptcy estate and property of the bankruptcy estate.

29. 17-27966-E-13 CATHERINE COOK MOTION TO MODIFY PLAN
MSN-1 Michael Noble 5-12-18 [31]

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 Not Provided. No Proof of Service was filed with the Motion. 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 not been properly set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Confirm the Modified Plan is denied without prejudice.

Catherine Cook ("Debtor") seeks confirmation of the Modified Plan because she was in an automobile collision and has had unexpected expenses and changes to income as a result. Dckt. 33. The Modified Plan proposes plan payments of $450.00 for the first four months, followed by payments of $2,050.00 for the remaining fifty-six months. Dckt. 35. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

NO PROOF OF SERVICE

Debtor did not file a Proof of Service with the Motion. Without all necessary parties being served, the Motion cannot be addressed on its merits. 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 Confirm the Modified Chapter 13 Plan filed by Catherine Cook ("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 without prejudice.

THE COURT HAS PREPARED THE FOLLOWING ALTERNATIVE RULING IF DEBTOR PROVIDES PROOF OF SERVICE TO ALL NECESSARY PARTIES

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on July 2, 2018. Dckt. 45. The Chapter 13 Trustee asserts that Debtor is $2,050.00 delinquent in plan payments, which represents one month of the proposed $2,050.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Chapter 13 Trustee, the Plan will complete in sixty-two months due to the actual amount due to claims being more than proposed by Debtor. The Chapter 13 Trustee calculates that increasing the plan payments by $6.00 would make the plan feasible, although that does not include mortgage late fees that are in an unspecified amount in Section 7 of the Modified Plan. The Modified Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

The confirmed plan in this case includes Wells Fargo Dealer Services in Class 2A, but the modified plan does not include that claim. The Chapter 13 Trustee notes how Debtor believes that the debt has been satisfied by her vehicle insurance company and that she intends to amend the claim if Wells Fargo does not do it itself. The Chapter 13 Trustee argues that the claim has not been amended and that Debtor cannot do so for the creditor.

The Chapter 13 Trustee argues that the proposed plan does not comply with Local Bankruptcy Rule 9004-1(c), which requires the name of the signing person to be underneath a signature, because Debtor and counsel have not typed their names under the signature lines.

The Chapter 13 Trustee opposes the language proposed in Section 7.01 about Debtor curing post-petition payments and late fees because Debtor does not specify the total amount of the port-petition mortgage payments to be added to Class 1 or the amount of late fees. The Chapter 13 Trustee notes that the current principal amount due is $4,594.50. With the unclear terms proposed, it does not appear that Debtor can comply with the Modified Plan under 11 U.S.C. § 1325(a)(6).

The Chapter 13 Trustee argues that the Plan is not feasible according to 11 U.S.C. § 1325(a)(6) because Debtor's new Schedule J (not indicated as either amended or supplemental) adjusts from $200.00 to $500.00 for transportation; $75.00 to $175.00 for entertainment; and $50.00 to $57.00 for childcare/education. The Chapter 13 Trustee notes that

Schedule J does not indicate any dependents to support the childcare/education expense, and the schedule continues to budget $100.00 for vehicle insurance even though Debtor states that she does not have a vehicle anymore. Absent explanation from Debtor as to how the proposed changes in expenses are accurate, the court does not believe that Debtor's projection is in good faith. That is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(3).

DEBTOR'S REPLY

Debtor filed a Reply on July 4, 2018. Dckt. 48. Debtor argues a payment of $2,050.00 was made on July 2, 2018, to cure the delinquency, and Debtor proposes increases plan payments by $10.00 to address feasibility concerns.

As to the claim for Wells Fargo Dealer Services, Debtor confirms that the claim is not included in the plan so that it is unaffected because it has supposedly been paid through insurance.

Debtor also proposes adding language to state that the total post-petition mortgage payment is $4,594.50 and that late fees total $55.39 per month. Debtor argues that transportation expenses increased because she is paying other people to transport her, and she states that she pays for insurance because she drives cars belonging to other people. As to the childcare/education expense, Debtor argues that it is actually for clothing and was placed on the wrong line.

RULING

On the new Schedule J, the court notes that food and housekeeping expenses have also increased from $250.00 to $350.00 without explanation. Reviewing Debtor's Supplemental Schedule I shows that she now earns $657.00 more in monthly income (increasing from $2,936.00 to $3,593.00). *Compare* Dckt. 34, *with* Dckt. 1. It may be that Debtor has increased the expenses to "save" her increased income from becoming part of the plan payments.

Despite Debtor attempting to explain the various changes and how at least one expense is listed on the wrong line, no new supplemental Schedule J has been filed. Debtor's situation appears to be caused by an automobile collision, with Debtor currently in an in-between phase for her expenses. She states she has additional transportation expenses and maintains vehicle insurance because of the change and how she borrows cars, but no information is provided about whether Debtor intends to continue on in this case (and presumably for the next four and half years) without a car. 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 Catherine Cook ("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.

30.	**18-22366-E-13** **MOH-1**	**AMY HINKLE** **Michael Hays**	**MOTION TO VALUE COLLATERAL OF CHRYSLER CAPITAL** **7-3-18 [21]**

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 July 3, 2018. 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 Chrysler Capital ("Creditor") is granted, and the secured claim is determined to have a value of $14,164.00.

Amy Hinkle ("Debtor") moves to value the secured claim of Chrysler Capital ("Creditor"). The Motion alleges that Debtor is the owner of a 2016 Jeep Patriot Sport 4x4 ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $14,164.00 as of the petition filing date. Debtor has not submitted a declaration asserting what she believes to be the Vehicle's value.

Debtor has provided the court with a Kelley Blue Book Valuation Report for the Vehicle. The Kelley Blue Book Report is authenticated in the Declaration of Clancy Callahan, who works in the office of Debtor's counsel. While stated as merely that Clancy Callahan "was asked to download the Kelley Blue Book information for the Debtor's vehicle," the court reads it to state that Callahan downloaded the Report and authenticates (Federal Rule of Evidence. 901(b)(1)) the Report. Dckt. 23 at 2. The Report being a market report that is generally recognized and relied upon in the vehicle sale and purchase industry, it is excepted from the hearsay rule. FED. R. EVID. 803(17).

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on July 6, 2018. Dckt. 26. The Chapter 13 Trustee argues that the Motion fails to comply with Local Bankruptcy Rule 9014-1(d) and Federal Rule of Bankruptcy Procedure 9013 because it does not cite a Code provision that would allow the requested relief, albeit common.

The Chapter 13 Trustee also notes that Debtor has not provided a declaration regarding any information about the Vehicle, including its purported value. The Chapter 13 Trustee argues that the submitted declaration is inadmissible hearsay that has not been qualified for an exception.

DISCUSSION

Creditor filed Proof of Claim No. 1-1 on May 16, 2018. Attached to that Proof of Claim is a copy of the Retail Installment Sale Contract, dated October 17, 2015, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $25,799.39, $15,700.00 of which Creditor claims as secured by the Vehicle. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized.

Debtor has provided the court with evidence, that the Kelley Blue Book Report lists the Vehicle as worth $14,164.00.

The lien on the Vehicle's title secures a purchase-money loan incurred on October 10, 2015 (purchase contract date), which is more than 910 days (the court computing it to be 930 days) prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $25,799.39. Claim #1. 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 $14,164.00, 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 Lauro Avila and Danelle Avila ("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 Patriot Sport 4x4 ("Vehicle") is determined to be a secured claim in the amount of $14,164.00, 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 $14,164.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

31. 18-22366-E-13 DPC-1 | **AMY HINKLE** **Michael Hays** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 6-18-18 [17]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on June 18, 2018. By the court's calculation, 29 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is overruled.

David Cusick ("the Chapter 13 Trustee") opposes confirmation of the Plan on the basis that it relies upon a pending motion to value and will not be feasible without that motion being granted.

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of Chrysler Capital. The court heard that valuation motion at the July 17, 2018 hearing and granted the Motion,

determining the secured claim to be $14,164.00. The proposed Plan provides for paying such secured claim as a Class 2 Claim. Plan, ¶ 3.08; Dckt. 7.

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 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 the Plan is overruled, and the proposed Chapter 13 Plan filed on April 23, 2018, is confirmed. Counsel for the Debtor shall prepare and forward to the Chapter 13 Trustee a proposed order confirming the Plan, which upon approval by the Trustee shall be lodged with the court.

32. 18-21469-E-13 DONNA WELCH MOTION TO LIST PROPERTY FOR SALE
DEF-4 David Foyil 6-1-18 [65]

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 June 1, 2018. By the court's calculation, 46 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion for Authority to List Property for Sale 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 Authority to List Property for Sale is denied.

Donna Welch ("Debtor") has filed a Motion asking for "permission" to list the Wilderness Way Property ("Property") for sale. Dckt. 65. The Motion states that the property was listed for sale prior to the commencement of this case, with the listing agreement having expired on June 22, 2018. The court notes that there was no assumption of any pre-petition listing agreement, and no pre-petition agreement was listed on Schedule G. Dckt. 16 at 14.

Debtor argues that the sale of the property is in the best interests of creditors because the proceeds will pay all secured claims in full. Motion ¶ 5, Dckt. 65. From the Schedules and Proofs of Claim filed, so far there is only Wells Fargo Bank, N.A., and the Amador County Tax Collector with secured claims in this case.

The Motion then goes further, not merely requesting that the court "approve" an action, listing of property for sale, for which approval is not required, but then appearing to write and pre-confirm terms for a bankruptcy plan. It also appears to, without regard to the Bankruptcy Code enacted by Congress, specify how the sale will be conducted, that Debtor can disburse the monies outside of a Chapter 13 Plan, and then when all claims have been paid, any "other" amounts necessary will be given by Debtor to the Chapter 13 Trustee.

The Motion, then in paragraph 8 mentions, in passing that the unidentified listing agent works under the direction of a broker, and that such broker is Debtor's counsel in this case. Further, that the potential for a conflict of counsel serving also as broker is not a concern, as counsel has advised Debtor on the legal issues, and based on such advise, Debtor will waive counsel's conflict.

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on June 28, 2018. Dckt. 83. The Chapter 13 Trustee argues that this Motion is only a preliminary one to a later motion to eventually approve a proposed sale to a particular buyer. Additionally, he notes that the relief requested in this Motion is provided for in the proposed plan set for hearing on July 31, 2018.

Despite the apparent redundancy of this Motion, the Chapter 13 Trustee states that he does not oppose allowing Debtor to list the Property for sale.

Second, the Chapter 13 Trustee notes that Debtor's attorney has been disclosed to be the realtor/listing agent for the sale of the Property. He notes that there is no separate motion to employ Debtor's counsel as a realtor or listing agent, and he would oppose any such employment request as part of this Motion.

The Chapter 13 Trustee also notes that the proposed plan calls for payment to Wells Fargo Home Mortgage and Amador County Tax Collector, but the Chapter 13 Trustee does not appear to be the disbursing agent. He states that he opposes any motion that seeks to divert monies, otherwise required to be paid through the Plan, to be diverted through unidentified persons.

DISCUSSION

On the first point, the Motion is unnecessary. The Bankruptcy Code permits Debtor to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here, Debtor proposes to *list for sale* the real property commonly known as 17071 Wilderness Way, Jackson, California ("Property").

As noted by the Chapter 13 Trustee, no broker has been authorized to be employed, and no real estate commission can be paid. 11 U.S.C. § 327. The Motion, buried in paragraph 8, states:

> 8. The **listing agent works under the direction of** her broker, to wit, **David Foyil**, who is also **counsel for Debtor**. Debtor has been informed of potential conflicts of interest resulting from representation by counsel as a real estate broker and has waived any such conflict.

Motion ¶ 8, Dckt. 65. Thus, it is admitted that Debtor's counsel has chosen to undertaken a dual representation as a second professional for Debtor, who is also serving as the plan administrator. Counsel acknowledges that there is a conflict, stating that such has been waived by Debtor, but Debtor's waiver appears to be based on the legal advice provided by Counsel, the same attorney that has the conflict.

Presumably, if the engagement of Counsel as the real estate broker had been properly disclosed in the required motion to employ, the court could have addressed the issues and provided the necessary

independent review of the conflict, but that has not occurred. The representation by the professional of Debtor has been accepted and is in place. The failure to obtain authorization for the employment does not diminish the obligations of the professional to provide the services—just the right to compensation.

As is well established law, a professional [employed by a trustee or other person exercising the power of a trustee] who fails to obtain authorization to be employed pursuant to 11 U.S.C. § 327 is not entitled to any compensation. *See Atkins v. Wain (In re Atkins)*, 69 F.3d 970, 973–74 (9th Cir. 1995); *Interwest Business Equip. v. United States Trustee (In re Interwest Business Equip.)*, 23 F.3d 311, 318 (10th Cir. 1994)

The Declaration of Debtor in support of this Motion states that Debtor, having listed it for a year with the broker, who appears to be Debtor's counsel, and there not being a sale, intends to re-list it with the same broker. Exhibit A is identified as the new listing agreement. Dckt. 67. The first thing that stands out is that the "Salesperson" is Janelle Louanne Foyil. Thus, it appears that the salesperson is not merely an employee of counsel, but spouse, daughter, or other relative.

The Motion is denied as unnecessary and not something for which authorization is required. The Plan terms shall be stated in the Plan, not through a motion seeking unnecessary authorization. If Debtor wants to employ a real estate broker and agent, that may be done as permitted under the Bankruptcy Code.

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 For Authorization to List Property filed by Donna Welch, Chapter 13 Debtor, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied.

33. **18-23072-E-13 DPC-1** | **STEVEN/SHARON COLLINS** **Pro Se** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **6-21-18 [16]**

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 June 21, 2018. 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.

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

A. Steven Collins and Sharon Collins ("Debtor") have failed to provide tax returns and pay stubs;

B. Debtor has failed to file tax returns;

C. Debtor failed to appear at the Meeting of Creditors;

D. No plan payments or plan term have been proposed;

E. Schedules I and J are incomplete;

F. The Plan fails the liquidation analysis; and

G. Prior cases in a series of filings have not been disclosed.

The Chapter 13 Trustee's objections are well-taken. Debtor has not provided the Chapter 13 Trustee with employer payment advices for the sixty-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv); FED. R. BANKR. P. 4002(b)(2)(A). Also, the Chapter 13 Trustee argues that Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A)(i); FED. R. BANKR. P. 4002(b)(3). Debtor has failed to provide all necessary pay stubs and has failed to provide the tax transcript. Those are independent grounds to deny confirmation. 11 U.S.C. § 1325(a)(1).

Debtor admitted at the Meeting of Creditors that the federal income tax return for the 2015 and 2017 tax years have not been filed still. Filing of the returns 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).

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 the Chapter 13 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).

The Plan does not appear to be proposed in good faith because it proposes plan payments of $0.00 for zero months. Additionally, Schedule I appears incomplete because no income is listed, and Schedule J is incomplete because it is missing a page.

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 there is non-exempt equity of $104,583.00, but the Plan proposes a 0.00% dividend to general unsecured claims.

The Chapter 13 Trustee reports that Debtor failed to disclose a prior bankruptcy case (Case No. 18-20835, filed on February 14, 2018) on the petition. Debtor was required to report any bankruptcy cases filed within the prior eight years. Debtor reported four cases (Case Nos. 11-39208, 11-46417, 14-25862, and 14-32084), but they did not report Case No. 18-20835.

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 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 the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

34. 18-23072-E-13 NLL-1 | **STEVEN/SHARON COLLINS** **Pro Se** | **OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A. 6-21-18 [24]**

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 June 21, 2018. 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.

Wells Fargo Bank, N.A. ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that it does not cure pre-petition arrears on Creditor's secured claim.

Creditor's objection is well-taken. The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts $48,240.06 in pre-petition arrearages. The Plan does not propose to cure those arrearages. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearages.

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 Wells Fargo Bank, N.A. ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

35. 15-27773-E-13 KATE KERNER MOTION TO MODIFY PLAN
PGM-1 Peter Macaluso 5-28-18 [84]

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 28, 2018. By the court's calculation, 50 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The hearing on the Motion to Confirm the Modified Plan is continued to 3:00 p.m. on xxxx, 2018.

Kater Kerner ("Debtor") seeks confirmation of the Modified Plan because Debtor's income has been reduced by $6,500.00 per month as a result of the termination of a contract brought about by a conflict with her client. Dckt. 86. The Modified Plan proposes that $63,810.00 be paid through June 2018 and new plan payments of $2,950.00 begin July 2018 for twenty-eight months. Dckt. 87. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on June 28, 2018. Dckt. 92. The Chapter 13 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 is currently delinquent $16,663.76 under the confirmed plan. Debtor does not appear to have filed a Supplemental Schedule I, reflecting her current income, despite Debtor stating she is delinquent because of lost income of $6,500 per month starting in October 2017. Dckt. 86. Debtor's 2017 1099 statement reflects a monthly gross income of $21,541.80. Dckt. 92. It appears that Debtor's income has increased from the previous year, and an updated Schedule I would be required if that is the case.

DEBTOR'S REPLY

Debtor filed a Reply on July 9, 2018. Dckt. 95. Debtor states that the updated Schedule J filed with the court is a supplemental schedule, and Debtor requests a continuance to file a Supplemental Schedule I.

RULING

Without a current and accurate accounting of Debtor's disposable income, the court cannot approve the Plan. Debtor seems to believe that filing schedules with updated income and expenses can resolve the Chapter 13 Trustee's concerns. With that in mind, the court afford Debtor this one continuance to provide supplemental schedules and pleadings. The hearing is continued to 3:00 p.m. on xxxx, 2018.

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 Kate Kerner ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearing on the Motion to Confirm the Modified Plan is continued to 3:00 p.m. on xxxx, 2018, for Debtor to file current schedules and pleadings in support of confirmation.

36. **15-27773-E-13** **KATE KERNER** **CONTINUED MOTION TO DISMISS CASE**
DPC-4 **Peter Macaluso** **4-27-18 [78]**

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, 2018. By the court's calculation, 33 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 hearing on the Motion to Dismiss is continued to 3:00 p.m. on xxxx, 2018.

David Cusick ("the Chapter 13 Trustee") seeks dismissal of the case on the basis that Kate Kerner ("Debtor") is $11,079.54 delinquent in plan payments, which represents multiple months of the $2,792.11 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).

DEBTOR'S OPPOSITION

Debtor filed an Opposition on May 15, 2018. Dckt. 82. Debtor's counsel argues that Debtor promises to file a modified plan before the hearing date. Debtor fails (or refuses) to provide a declaration explaining the reasons for the defaults or how such financial failures are not likely to continue in this case.

FILING OF MODIFIED PLAN

Debtor filed a Modified Plan and Motion to Confirm on May 28, 2018. Dckt. 84, 87. The court reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckt. 84, 86. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon Debtor's personal knowledge. FED. R. EVID. 601, 602.

MAY 30, 2018 HEARING

Debtor appearing to actively prosecute the case, the court considered denying the Motion without prejudice, but because of the amount in default, the court instead continued the hearing to 3:00 p.m. on July 17, 2018. Dckt. 89, 90.

RULING

The court continued the hearing on this matter to be in conjunction with a motion to confirm a modified plan. After reviewing that motion and the supporting pleadings, the court concurred with the parties that a continuance was appropriate for Debtor to update the court's record with the latest financial information that may (or may not) support confirmation. With this matter relying on the motion to confirm a modified plan, and with that motion being continued, this Motion is also continued to 3:00 p.m. on xxxx, 2018.

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 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 hearing on the Motion to Dismiss is continued to 3:00 p.m. on xxxx, 201x.

37. 18-20578-E-13 SMB-1 | **CONNIE MALLAVIA** **Stephan Brown** | **MOTION TO CONFIRM PLAN** **5-22-18 [36]**

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 22, 2018. 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.

Connie Mallavia ("Debtor") seeks confirmation of the Amended Plan because it is presented on the correct plan form this time and because it provides for three additional claims. Dckt. 38. The Amended Plan proposes payments of $2,825.00 per month for three months, followed by $2,750.00 per month for fifty-seven months, with a 4% dividend to general unsecured claims. Dckt. 39. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on June 28, 2018. Dckt. 45. The Chapter 13 Trustee notes that plan payments decrease without explanation and without any supplemental Schedules I & J being filed in support. The Chapter 13 Trustee notes that Debtor is above-median income according to the pleadings, so any unexplained reduction would appear not to be her best effort as far as contributing disposable income. *See* 11 U.S.C. § 1325(b).

The Chapter 13 Trustee notes that a Notice of Postpetition Mortgage Fees was filed on June 25, 2018, in the amount of $550.00. He calculates that if the plan reduction is to account for those fees, then

the plan will pay them within eight months. Any continuation of the reduced payment amount would need to be explained.

RULING

Debtor has not explained why the plan payments in this case are being reduced after the third month of the Plan, and her scheduled disposable income is $2,827.66. *See* Dckt. 1. If the Chapter 13 Trustee's hunch is correct that the reduction may be because of postpetition mortgage fees, then Debtor faces the second problem of not explaining why the plan payments should continue to be reduced after those fees are paid.

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 Connie Mallavia ("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.

38. **18-22883-E-13 MWB-1** | **RICHARD HARRIS** **Mark Briden** | **MOTION TO VALUE COLLATERAL OF WILMINGTON SAVINGS FUND SOCIETY** **5-24-18 [19]**

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 Debtor, Chapter 13 Trustee, Creditor, and Office of the United States Trustee on May 24, 2018. By the court's calculation, 54 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 Wilmington Savings Fund Society ("Creditor") is xxxxxxxxxxxx.

The Motion to Value filed by Richard Harris ("Debtor") to value the secured claim of Wilmington Savings Fund Society ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 17237 Marianas Way, Cottonwood, California ("Property"). Debtor seeks to value the Property at a fair market value of $295,000.00 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).

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on July 2, 2018. Dckt. 34. The Chapter 13 Trustee notes that Creditor filed an objection to confirmation in this case alleging that the proposed plan included an impermissible lien strip (this Motion) and that Creditor had the Property appraised as being worth $360,000.00.

CREDITOR'S OPPOSITION

Creditor filed an Opposition on July 3, 2018. Dckt. 37. Creditor argues that it obtained an appraisal of the Property on May 31, 2018, showing that its value is $360,000.00. Because of that valuation, Creditor argues that its claim is fully secured by the excess equity in the Property, preventing Debtor from valuing Creditor's claim.

No Declaration has been filed providing testimony of an expert as to the value of the Property. Exhibit 1, the document identified as an Appraisal Report is not authenticated. While arguing a value, Creditor has not provided the court with evidence.

DISCUSSION

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).

The appraisal attached as Exhibit 1 to Creditor's Opposition shows that the Property has a value of $360,000.00 as of May 31, 2018. Dckt. 38. No proofs of claim have been filed affecting the Property in this case. Debtor has listed the Property as having a value of $295,000.00 on Schedule A, with $1.00 claimed as exempt on Schedule C. Dckt. 1. On Schedule D, Debtor lists two claims as secured by the Property: one for $306,000.00 and the other for $82,000.00. *Id.*

Using the $360,000.00 value for the Property, there would be at least $53,999.00 in additional equity to support Creditor's claim secured by a second deed of trust.

However, the evidence of value presented is very slim for Debtor, he just stating an opinion that he, as the owner, believes the property is worth only $295,000. While the Appraisal would appear to identify a number of comparable properties, there is no testimony provided by Creditor.

Xxxxxxxxxxxxxxxxxxxx

The Motion is **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 Value Collateral and Secured Claim filed by Richard Harris ("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 **xxxxxxxxxxx**.

39. **18-22883-E-13** **RICHARD HARRIS** **OBJECTION TO CONFIRMATION OF PLAN BY WILMINGTON SAVINGS FUND SOCIETY, FSB**
ASW-1 **Mark Briden**
6-21-18 [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.

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and Chapter 13 Trustee on June 21, 2018. 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 overruled without prejudice.

Wilmington Savings Fund Society, FSB, d/b/a Christiana Trust, as indenture trustee, for the CSMC 2017-1 Trust, Mortgage-Backed Notes, Series 2017-1 ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that it violates the anti-modification provisions of 11 U.S.C. § 1322(b)(2).

Creditor's counsel argues that Creditor has a secured claim because counsel argues that the real property securing the claim has a value of $360,000. However, no person comes forward to provide testimony of value. Creditor has filed a document titled "Appraisal" as an exhibit, but there is no one who has come forward to properly authenticate it or provide any expert testimony. The Exhibits not having been authenticated and there being no testimony, Creditor has not provided any credible evidence with the merely factual arguments in the Objection.

Creditor has a detailed discussion of the law and limitation of valuing secured claims for less than the value of the collateral. Further, Creditor argues that a debtor cannot "stip a lien" when the claim is not wholly unsecured (citing *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002)).

Unfortunately, Creditor has also chosen not to file a proof of claim in this case. As the Chapter 13 Plan clearly provides, it is the creditor's claim, in the absence of an order of the court, that controls the value of the secured claim. Plan ¶ 3.02. If Creditor had filed a secured claim, this Objection is as easy as: (1) Proof of Secured Claim filed for $82,000, (2) Plan does not provide for Secured Claim, (3) Objection sustained, but Creditor has not done that, depriving the court of a basis to deny confirmation.

The Objection is overruled without prejudice. Not having the necessary evidence, the court cannot determine what secured claim needs to be provided for in connection with Creditor. FN.1.

FN.1. The rejection of this objection may be but a Pyrrhic victory for the Debtors. If this asserted creditor is correct and an unprovided for arrearage exists, the court can envision shortly seeing a motion for relief from the stay. At that point, Debtor and counsel would have to prepare a modified plan, motion to confirm modified plan, evidence to support the modified plan, notice a hearing, and conduct a hearing on the proposed modified plan. Any such proceedings because of the unprovided for cure of the arrearage would be clearly anticipated work to be covered by the no-look fee and likely not be reasonable additional costs and expenses if counsel has chosen to opt out of the no-look fee.

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 Wilmington Savings Fund Society, FSB, d/b/a Christiana Trust, as indenture trustee, for the CSMC 2017-1 Trust, Mortgage-Backed Notes, Series 2017-1 ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is overruled without prejudice.

40. **18-22883-E-13** **RICHARD HARRIS** **OBJECTION TO CONFIRMATION OF**
DPC-1 **Mark Briden** **PLAN BY DAVID P. CUSICK**
6-18-18 [26]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and Chapter 7 Trustee on June 18, 2018. By the court's calculation, 29 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. Richard Harris ("Debtor") cannot comply with the Plan because of an active Chapter 7 case (No. 18-21699);

B. Debtor admitted to having additional income at the Meeting of Creditors; and

C. The Plan relies on a pending motion to value.

First, the court notes that Debtor's Chapter 7 Case has been dismissed. No. 18-21699, Dckt. 28. As to the additional income, Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor admitted at the Meeting of Creditors that two sources of income (from Social Security for a granddaughter and from Shasta County) may cease providing funds, and the non-filing

spouse may be employed such that Schedule I's calculations would be incorrect. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of Wilmington Savings Fund Society, FSB, d/b/a Christiana Trust, as indenture trustee, for the CSMC 2017-1 Trust, Mortgage-Backed Notes, Series 2017-1 ("Creditor"). The court heard Debtor's motion to value Creditor's claim at the July 17, 2018 hearing and denied it. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

DEBTOR'S DECLARATION

Debtor filed a Declaration on July 10, 2018. Dckt. 43. Debtor states that his wife become employed against on May 14, 2018, as well as receiving disability payments from the state of California. He states that the total amount of her contributions to the Plan would be $692.00 per month.

Debtor states that the Shasta County program will not be terminated because it has been renewed, but he does not state for how long. Debtor claims that the program will provide him with $630.00 per month on average.

For Social Security payments, he states that payments to his granddaughter will decrease from $815.00 to $374.00 per month beginning on September 1, 2018.

RULING

The Chapter 13 Trustee's objections are well-taken. Debtor does not appear to have sufficient ongoing income to support plan payments, and the court has not valued a claim that was necessary to be valued for the Plan to be feasible. 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 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 the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

41. **18-23003-E-13 DPC-1** | **SUNG O AND JAE PALMER** **Aubrey Jacobsen** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **6-18-18 [17]**

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

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 June 18, 2018. By the court's calculation, 29 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. Sung O and Jae Palmer ("Debtor") failed to provide for payments of claims secured by Debtor's real property.

B. The Plan may not be Debtor's best effort because Debtor reports a vehicle at a lower value than the lien on the vehicle, but Debtor has not filed a Motion to Value Collateral.

DEBTOR'S RESPONSE

Debtor filed a Response on July 3, 2018. Dckt. 26. Debtor states that they are drafting an amended plan that will provide for payments of the judicial liens against their real property and the first Deed of Trust on their real property. Debtor also states that they are drafting a motion to value their vehicle, a 2012 Chevrolet Sonic, in association with the secured claim of Wells Fargo.

DISCUSSION

The Chapter 13 Trustee's objections are well-taken. Debtor's Schedule D lists the claims of Cach, LLC, Guild Mortgage Company, LVNV Funding and The E-Tail Network, Inc. ("Creditor") as secured by the real property at 4350 Monhegan Way, Mather, California. Debtor's Schedule D estimates

the amount of Creditor's claims as $143,684.94 and indicates that they are secured by judgment liens from lawsuits and the first Deed of Trust on their real property. At the Meeting of Creditors held on June 14, 2018, Debtor indicated an intent to provide for the secured claim of Guild Mortgage in Class 4 of the Plan and the mortgage payment of $1,221 to Guild Mortgage is reported on Schedule J line 4. The Plan filed on May 14, 2018, does not provide for Guild Mortgage's secured claim. Dckt. 5. Debtor also indicated an intent to file a Motion to Avoid Lien on Cach, LLC, LVNV Funding and The E-Tail Network, Inc. A review of the docket shows that Debtor has not filed the necessary Motion to Avoid Lien.

The Chapter13 Trustee alleges that the Plan is not feasible and violates 11 U.S.C. § 1322(b)(2) because it contains no provision for payment of Creditor's matured obligation, which is secured by Debtor's residence. *See* 11 U.S.C. § 1325(a)(6).

11 U.S.C. § 1322(a) is the section of the Bankruptcy Code that specifies the mandatory provisions of a plan. It requires only that a debtor adequately fund a plan with future earnings or other future income that is paid over to the Chapter 13 Trustee (11 U.S.C. § 1322(a)(1)), provide for payment in full of priority claims (11 U.S.C. § 1322(a)(2) & (4)), and provide the same treatment for each claim in a particular class (11 U.S.C. § 1322(a)(3)). Nothing in § 1322(a) compels a debtor to propose a plan that provides for a secured claim, however.

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

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

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

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

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

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

When a plan does not provide for a secured claim, the remedy is not denial of confirmation. Instead, the claimholder may seek termination of the automatic stay so that it may repossess or foreclose upon its collateral. The absence of a plan provision is good evidence that the collateral for the claim is not necessary for the debtor's rehabilitation and that the claim will not be paid. This is cause for relief from the automatic stay. *See* 11 U.S.C. § 362(d)(1).

Notwithstanding the absence of a requirement in 11 U.S.C. § 1322(a) that a plan provide for a secured claim, the fact that this Plan does not provide for respondent Creditor's secured claim raises doubts about the Plan's feasibility. *See* 11 U.S.C. § 1325(a)(6). That is reason to sustain the Objection.

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of Wells Fargo, but that motion has not been filed. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

Unfortunately for Debtor, promises to file motions are not evidence. Regardless, Debtor indicating that they intend to proceed with another plan is another way of stating that they concur with the Chapter 13 Trustee that the current plan cannot be confirmed. 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 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 the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

42. **18-23003-E-13 EGS-1** | **SUNG O AND JAE PALMER** **Aubrey Jacobsen** | **OBJECTION TO CONFIRMATION OF PLAN BY CREDITOR GOULD MORTGAGE COMPANY** **6-20-18 [21]**

APPEARANCE OF THE FOLLOWING COUNSEL FOR GOULD MORTGAGE COMPANY REQUIRED FOR JULY 17, 2018 HEARING

Edward g. Scholss, Esq.
Lior Katz, Esq.
Lance Kaufman, Esq.

Telephonic Appearances Permitted for July 17, 2018 Hearing

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 Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on June 20, 2018. 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.

The Debtor has filed a Response stating that Debtor will file an amended plan and proceed with the necessary required motions.

The Objection to Confirmation of Plan is xxxxxx.

Guild Mortgage Company ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that Debtor failed to list Creditor's claim in their proposed Chapter 13 Plan.

DEBTOR'S RESPONSE

Debtor filed a Response on July 3, 2018. Dckt. 28. Debtor states that they are drafting an amended plan that will provide for payment Creditor's claim.

DISCUSSION

Creditor asserts a claim of $111,551.07 in this case. Debtor's Schedule D estimates the amount of Creditor's claim as $114,183.00 and indicates that it is secured by a first deed of trust on Debtor's residence. Debtor's proposed Chapter 13 Plan fails to list Creditor's claim.

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

11 U.S.C. § 1322(a) is the section of the Bankruptcy Code that specifies the mandatory provisions of a plan. It requires only that a debtor adequately fund a plan with future earnings or other future income that is paid over to the Chapter 13 Trustee (11 U.S.C. § 1322(a)(1)), provide for payment in full of priority claims (11 U.S.C. § 1322(a)(2) & (4)), and provide the same treatment for each claim in a particular class (11 U.S.C. § 1322(a)(3)). Nothing in § 1322(a) compels a debtor to propose a plan that provides for a secured claim, however.

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

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

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

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

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

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

When a plan does not provide for a secured claim, the remedy is not denial of confirmation. Instead, the claimholder may seek termination of the automatic stay so that it may repossess or foreclose upon its collateral. The absence of a plan provision is good evidence that the collateral for the claim is not

necessary for the debtor's rehabilitation and that the claim will not be paid. This is cause for relief from the automatic stay. *See* 11 U.S.C. § 362(d)(1).

Notwithstanding the absence of a requirement in 11 U.S.C. § 1322(a) that a plan provide for a secured claim, the fact that this Plan does not provide for respondent Creditor's secured claim raises doubts about the Plan's feasibility. *See* 11 U.S.C. § 1325(a)(6). That is reason to sustain the Objection.

Request for Dismissal of the Case

At the end of the Motion, Creditor includes an over-the-top request that ignores and disregards the Federal Rules of Bankruptcy Procedure as adopted by the United States Supreme Court. Creditor lumps in with the Objection to Confirmation a different claim for relief—the dismissal of the bankruptcy case for the "cause" stated to be:

> 3. Due to Debtors' failure to list Secured Creditor's claim in their proposed Chapter 13 Plan, the Plan cannot be confirmed and should be amended to include Secured Creditor's claim. Denial of confirmation and/or dismissal of this case is therefore warranted under both § 1307(c)(1) and § 1307(c)(5).

Motion ¶ 3, Dckt. 21.

With the Objection, Creditor has requested relief in the form of an order from the court—dismissal of the bankruptcy case. That request for relief by order of the court fails on several grounds. As Creditor knows, relief in the form of an order must be sought by motion (or "application" when specially authorized) from the court. FED. R. BANKR. P. 9013. Federal Rule of Bankruptcy Procedure 1017(f) requires that a request for dismissal of a Chapter 13 case "shall be on motion filed and served as required by Rule 9013." An "order" is not requested by burying it at the end of an Objection to Confirmation.

A motion to dismiss must be served on all parties in interest. Federal Rule of Bankruptcy Procedure 1017(a) requires that the motion be served as provided in Federal Rule of Bankruptcy Procedure 2002, which governs motions served on all parties in interest. Here, the "motion" buried at the end of the prayer was merely served on Debtor, Debtor's counsel, the Chapter 13 Trustee, and the U.S. Trustee—not all parties in interest. This is clearly deficient, even if a "motion" to dismiss could be joined with and hidden in the Objection.

This clearly defective service concerns the court greatly. The court could have been misled by Creditor and Creditor's counsel into issuing a void order. Federal court proceedings are not ones in which the court and parties play a cat and mouse game in which the court is the mouse.

Creditor and Creditor's Counsel then "overrule" the Supreme Court and reject the Supreme Court provisions in Federal Rule of Bankruptcy Procedure 9014 which provides which of the Federal Rules of Civil Procedure and Federal Rules of Bankruptcy Procedure for adversary proceedings will be applied in Contested Matters—bankruptcy case law and motion practice. Missing from the incorporated Rules are Federal Rule of Civil Procedure 18 and Federal Rule of Bankruptcy Procedure 7018 which provides:

Rule 18. Joinder of Claims

(a) In General. A party asserting a claim, counterclaim, crossclaim, or third-party claim may join, as independent or alternative claims, as many claims as it has against an opposing party.

(b) Joinder of Contingent Claims. A party may join two claims even though one of them is contingent on the disposition of the other; but the court may grant relief only in accordance with the parties' relative substantive rights. In particular, a plaintiff may state a claim for money and a claim to set aside a conveyance that is fraudulent as to that plaintiff, without first obtaining a judgment for the money.

This is incorporated into Federal Rule of Bankruptcy Procedure 7018, states "Rule 18 F.R.Civ.P. applies in adversary proceedings." If Creditor were filing a complaint in an adversary proceeding, it could join multiple claims for relief. But not in a contested matter such as is now before the court. *See* FED. R. BANKR. P. 9014(b).

In addition to defective service and the failure to provide grounds, there is no "motion" requesting the relief.

At the hearing, counsel addressed the legal basis, consistent with the certifications made by Creditor and counsel with the filing of an objection to confirmation in which a request to dismiss the case was slipped in the end, stating **xxxxxxxxxxxxxxxxxxx**

RULING

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). However, the Objection violates Federal Rule of Bankruptcy Procedure 9014.

The Objection is **xxxxxxxxxxx**.

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 Guild Mortgage Company ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Confirmation of the Plan is **xxxxxxxxxx**.

43. **17-22489-E-13** **EUGENE NIERI** **CONTINUED MOTION TO MODIFY**
MRL-7 **Mikalah Liviakis** **PLAN**
5-4-18 [106]

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 5, 2018. By the court's calculation, 52 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is denied.

Eugene Nieri ("Debtor") seeks confirmation of the Modified Plan, which calls for payments of $3,400.00 for three months followed by $1,600.00 per month for fifty-seven months. Dckt. 109. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on June 5, 2018. Dckt. 112. The Chapter 13 Trustee asserts that Debtor is $1,544.50 delinquent in plan payments, which represents less than one month plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

JUNE 26, 2018 HEARING

At the hearing, the court continued the matter to 3:00 p.m. on July 17, 2018, to allow Debtor to bring plan payments current. Dckt. 115.

RULING

No evidence has been provided since the June 26, 2018 hearing that Debtor is current with plan payments. 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 Eugene Nieri ("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.

44. **15-27295-E-13** **ERROL/ALITA MERCADO** **MOTION TO MODIFY PLAN**
RJ-5 **Richard Jare** **5-18-18 [151]**

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, and Office of the United States Trustee on May 18, 2018. By the court's calculation, 60 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is denied.

Errol Mercado and Alita Mercado ("Debtor") seek confirmation of the Modified Plan because of a delinquency asserted by David Cusick ("the Chapter 13 Trustee"). Dckt. 155. The Modified Plan calls for the following plan payments:

A. $675.00 to be paid by May 21, 2018;

B. Debtor to become current by August 18, 2018, under the First Modified Plan, which required payments of $450.00 for the first twelve months, no payment for October 2016, $450.00 for seven months beginning November 2016, and then increasing plan payments to $675.00.

Dckt. 152. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee filed an Opposition on June 28, 2018. Dckt. 160. He opposes the proposed plan payments in the Additional Provisions to the extent that they call for Debtor to become current (on a delinquency of $2,376.00) by August 18, 2018. The Chapter 13 Trustee notes that he objects to verify that the plan payments are in fact $13,599.00 paid through April 2018; a one-time payment of $2,376.00 by August 18, 2018; and monthly payments of $675.00 beginning May 2018.

The Chapter 13 Trustee notes that the Notice of Hearing provided for this matter does not contain language about pre-hearing dispositions, in violation of Local Bankruptcy Rule 9014-1(d)((3)(B)(iii).

RULING

As a procedural matter, the court notes that the Chapter 13 Trustee is correct that the Notice of Hearing provided for this Motion does not comply with Local Bankruptcy Rule 9014-1(d)(3)(B)(iii), but that grounds is not—by itself for purposes of the instant matter—sufficient to deny confirmation. The court is certain that counsel will update his pleading practice to provide all required notices to parties when serving them with notice of a hearing.

This case has had a series of delinquency grounds raised by the Chapter 13 Trustee. When the first modified plan was confirmed in December 2016, the Chapter 13 Trustee had initially opposed confirmation because Debtor was delinquent but then cured before the hearing. *See* Dckt. 86. Since then, the Chapter 13 Trustee has moved to dismiss this case four times, each solely because Debtor was delinquent with plan payments. *See* Dckt. 91, 116, 131, 144.

Debtor's last Supplemental Schedules I & J were filed on November 14, 2016. Dckt. 75. The schedules show a net disposable monthly income of $450.00. *Id.* at 5. Despite supposedly having exactly enough in disposable income to make plan payments, Debtor has consistently been delinquent on payments.

Debtor has not shown any evidence to support the court finding that Debtor will be able to cure the delinquency as called for in the Modified Plan. Instead, Debtor testifies that the money is on-hand now but is unavailable because it is needed for moving expenses while a landlord sells the current residence. Dckt. 155 at 1. Debtor has not stated how much moving expenses are estimated to cost, but Debtor expects to cure the delinquency once a security deposit is refunded.

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 Errol Mercado and Alita Mercado ("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.

45. 14-20519-E-13 STEVEN/DEBORAH MCCONNELL MOTION TO MODIFY PLAN
PGM-1 Peter Macaluso 5-28-18 [50]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on May 28, 2018. By the court's calculation, 50 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is denied.

Steven McConnell and Deborah McConnell ("Debtor") seek confirmation of the Modified Plan because mortgage expenses increased. Dckt. 52. The Modified Plan proposes that $57,500.00 be paid through April 2018, followed by payments of $2,230.00 for nine months. Dckt. 53. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on June 28, 2018. Dckt. 63. Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Chapter 13 Trustee, the Plan will not complete timely because the Modified Plan does not list an arrearage dividend to NationStar Mortgage in Class 1, but that creditor filed Proof of Claim No. 2-1 showing arrears of $8,023.30. Additionally, the creditor filed a Notice of Mortgage Payment Change that increases the monthly amount due from $1,512.83 to $1,730.01. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). The Chapter 13 Trustee notes that Schedule J shows disposable income of $2,030.14, which is less than the proposed plan payment of $2,230.00. Debtor's own assertion of disposable income indicates that the Modified Plan is confirmable.

DEBTOR'S REPLY

Debtor filed a Reply on July 10, 2018. Dckt. 66. Debtor promises to file amended schedules showing an ability to afford plan payments, and Debtor requests a continuance until after an Objection to Notice of Mortgage Payment Change scheduled for July 31, 2018.

RULING

Unfortunately for Debtor, no supplemental schedules have been filed showing an ability to make the plan payments. Additionally, Debtor has elected (or refused) to provide any testimony in opposition to the Motion to Dismiss, which could have been as simple as explaining what counsel argues (Debtor can somehow increase the disposable income) in opposing the Motion.

The Motion to Confirm includes some "curious" allegations, stated to be supported by Debtor's testimony under penalty of perjury that their prior plan was to have a $17,000+ "Surplus." Motion ¶ 3, Dckt. 50. Debtor's testimony under penalty of perjury in the Declaration in support of the Motion to Confirm includes:

> 2. We have had several changes/problems that have arose which now require us to further modify our Chapter 13 Plan. These factors include; **Our mortgage lender increased our payment by almost double,** which we could not afford. **Was told we had $17,000+ surplus/reserve** in our Plan and to continue making our original plan payment. Was **not aware that the Trustee send our surplus back to the lender**. Had the surplus been sent to us, we would have sent it to the Trustee to apply to any debt and we would not be behind.
>
> 3. As of April 2018, we have paid a total of $57,500.00 to the Chapter 13 Trustee over the last 51 months. **We are delinquent with our Plan payments $10,242.00.** The increase in the mortgage payment was too high and we could not afford it. We thought we were under a loan mod and so kept making our original payments.

Declaration, Dckt. 52.

In the Plan confirmed in this case (Dckt. 5), the terms pertinent to this discussion include the following:

1. Monthly Plan Payment.....$1,150
2. Plan Term..... Sixty Months

3. Debtor's Atty Fee.....($ 45) [Plan provides to pay in advance of mortgage cure payment]

4. CH 13 Fee.....($ 92) [Est. 8%]

5. Class 1 Secured Claim
   a. Current Post-Petition Pmt...($ 700)
   b. $10,000 Arrearage Pmt.....($ 167)

6. Class 2 Secured Claims
   a. Car Loan Pmt.....($ 172)
   b. WFB 2nd DOT.....($ 0) [§ 506(a) valuation]

7. Class 4 Direct Pmt.....None

8. Class 5 Priority Pmt.....None

9. Class 7 General Unsecured Claims

   a. Dividend on $142,666.....0.00%

On its face, there is no "surplus" provided for in the Plan. Additionally, there is no "secret surplus" that might exist if Debtor intentionally grossly understated the unsecured claim dividend when there was actually money in the Plan for that class of claims. Adding up all of the monies required to be disbursed for administrative expenses and Debtor's secured claims to be paid so Debtor can keep the real and personal property, ($1,176) of the plan payment is exhausted.

In reality, the Plan advanced by Debtor was slightly underfunded each month. Possibly at the time it was confirmed the Chapter 13 Trustee fees were slightly lower. If 6.5%, then the plan payments and disbursements just about balance.

The court's review of the files in this case discloses the following documents that have been filed and served with respect to the current monthly mortgage payment that is now reported by Debtor and Debtor's counsel to have suddenly doubled, as well as information on Debtor's finances:

A. July 2015 Declaration of Debtor explaining why $7,800 increase in income would not result in an increase in Plan payments because of increased expenses. Dckt. 42.

1. Rent expense, for Debtor's employment in San Francisco, increase of ($500)
2. Increase in transportation costs.
3. Increase of medical and food related expenses.
4. Debtor had underpaid income taxes and had a $3,200 tax bill due.

B. May 11, 2017 Filed Notice of Mortgage Payment Change

1. Beginning June 1, 2017, total current mortgage payment increased to $1,500.58.

2. The increase is stated to have been caused by an increase in the interest rate from 2.625% to 3.625%.

3. This is stated to have been served on Debtor and Debtor's counsel on May 11, 2017.

C. November 9, 2017 Filed Notice of Mortgage Payment Change

1. Beginning December 2, 2017, total current mortgage payments increased to $1,512.83.

2. The increase is stated to have been caused by an increase in the interest rate from 3.625% to 3.750%.

3. This is stated to have been served on Debtor and Debtor's counsel on November 9, 2017.

At this juncture, the court notes that attached to Proof of Claim No. 2 filed for the secured claim at issue, a copy of the Adjustable Rate Note is included as an attachment. The terms of the Note provide that the interest rate starts at 4.250% (Note ¶ 2) and that the interest rate will be adjusted every six months (Note ¶ 4). Thus, Debtor, their original counsel, and their current counsel well knew that the amount of the payment on this secured claim was subject to adjustment—but Debtor intentionally confirmed a Plan that had no cushion for such increases, proceeding with a plan being able to fund only the mortgage payment when the interest rate had dipped to some of the lowest in history.

D. May 1, 2018 Filed Notice of Mortgage Payment Change

1. Beginning June 1, 2017, total current mortgage payments increased to $1,730.01.

2. The increase is stated to have been caused by an increase in the interest rate from 3.750% to 4.750%.

3. This is stated to have been served on Debtor and Debtor's counsel on May 1, 2018.

Notwithstanding receiving these notices and the dramatic increase in payment occurring in May 2017, Debtor and Debtor's counsel somnolence was the response until May 2018 when they faced the Trustee's Motion to Dismiss (Dckt. 44).

Debtor has filed a Supplemental Schedule J to support Debtor's contention that they can now increase their projected disposable income. Dckt. 55. Debtor does not identify what expenses are being adjusted, leaving it for the court to ferret out. The court compares this Supplemental Schedule J to the one filed when the Debtor stated that expenses had increased so much that none of the $7,800 increase in income would increase Debtor's Projected Disposable Income.

	July 22, 2016 Filed Amended Schedule J, Dckt. 41	**May 28, 2018 Filed Amended Schedule J, Dckt. 55**	**Percentage Change increase% -decrease%**
Real Estate Taxes	($88.00)	$0.00	-100.00%
Home Maintenance	($200.00)	($100.00)	-50.00%
Electricity, Heat	($298.00)	($293.00)	-2.00%
Water, Sewer, Garbage	($80.00)	($100.00)	25.00%
Phone, Cable, Internet	($375.00)	($375.00)	0.00%
Food, Housekeeping Supplies	($1,250.00)	($1,250.00)	0.00%
Childcare	($131.00)	$0.00	-100.00%
Clothing, Laundry	($350.00)	($150.00)	-57.00%
Personal Care	($280.00)	($100.00)	-64.00%
Medical, Dental Exp	($240.00)	($240.00)	0.00%
Transportation	($500.00)	($500.00)	0.00%
Entertainment	($200.00)	$0.00	-100.00%
Charitable	($80.00)	($84.00)	5.00%
Life Ins	($114.00)	($114.00)	0.00%
Health Ins	($285.00)	($285.00)	0.00%
Vehicle Ins	($140.00)	($140.00)	0.00%
Car Registration	($31.33)	($31.33)	0.00%

Rent for Bay Area Employment	($500.00)	($500.00)	0.00%
Total Expenses	($5,142.33)	($4,262.33)	
Stated Take-Home Income	$6,292.47	$6,292.47	
Prior Stated Projected Disposable Income	$1,150.14	$2,030.14	**Presently Stated Projected Disposable Income**

Debtor relies on the court finding the adjustments to the expenses proffered as "necessary" for Debtor not to have to include any of a $7,800 increase in income becoming part of the projected disposable income to fund a plan. Now, it appears that such "additional" expenses are not actually "necessary" and can be reduced to allow Debtor to modify the Plan. Debtor chose not to tell the court how in the Declaration, just that it shall be.

The court takes statements made under penalty of perjury seriously, not treating them as mere arguments, conjecture, or puffery.

Debtor's testimony under penalty of perjury shows that they cannot decrease their expenses and increase the funding to pay for the known, expected increases in the mortgage payments for the semi-annual interest rate adjustments.

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 Steven McConnell and Deborah McConnell ("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.

46. **18-22497-E-13** **ROBERT MAC BRIDE** **OBJECTION TO CONFIRMATION OF**
DPC-2 **Pro Se** **PLAN BY DAVID P. CUSICK**
6-11-18 [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 (*pro se*) on June 11, 2018. By the court's calculation, 36 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.

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

A. Robert Mac Bride ("Debtor") has not made required plan payments to date.

B. Debtor's plan may not be his best effort.

C. Debtor's Plan fails the Chapter 7 liquidation analysis.

D. Debtor has failed to provide the Class 1 Checklist.

E. Debtor has failed to file tax returns.

F. Debtor has failed to provide required pay advices.

The Chapter 13 Trustee's objections are well-taken. The Chapter 13 Trustee asserts that Debtor is $3,073.00 delinquent in plan payments, which represents one month of the $3,073.00 plan payment. Before the hearing, another plan payment of $3,073.00 will be due. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

The Chapter 13 Trustee alleges that the Plan is not the Debtor's best effort under 11 U.S.C. § 1325(b). Debtor's annual income is above the median income, but he fails to file the required Form 122C-2 for debtors above median income. Thus, the court may not approve the Plan.

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 the Debtor's non-exempt equity totals $69,816.00, but he is proposing a 0% dividend to unsecured claims. Additionally, on Schedule J, Debtor reports his monthly net disposable income of $4,611.50 but proposes a lesser plan payment of $3,073.00. Dckt. 13.

The Chapter 13 Trustee argues that Debtor has failed to provide the Class 1 Checklist and Authorization to Release Information forms. Local Bankruptcy Rule 3015-1(b)(6) requires Debtor to provide the Class 1 Checklist and Authorization to Release Information forms to the Chapter 13 Trustee. Debtor has not provided these forms. Without Debtor submitting all required documents, the court and the Chapter 13 Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor admitted at the Meeting of Creditors that the federal income tax return for the 2017 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).

Debtor has not provided the Chapter 13 Trustee with employer payment advices for the sixty-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv); FED. R. BANKR. P. 4002(b)(2)(A). Debtor has failed to provide all necessary pay stubs. That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

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 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 the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

47. **17-25403-E-13** **BYLLIE DEE** **AMENDED MOTION TO VACATE**
BCJ-3 **Bert Carter** **DISMISSAL OF CASE**
6-15-18 [198]

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, and creditors on June 8, 2018. By the court's calculation, 39 days' notice was provided. 28 days' notice is required.

The Motion to Vacate 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 Vacate is denied.

Byllie Dee ("Debtor") filed the instant case on August 15, 2017. Dckt. 1. No plan was ever confirmed.

On October 4, 2017, David Cusick ("the Chapter 13 Trustee") filed a Motion to Dismiss the Case due to no plan payment having been made, no tax returns provided, no pay stubs provided, and no proof of Social Security number provided. Dckt. 19. Multiple hearings on the Motion to Dismiss were held, and the Motion was granted eventually on March 21, 2018. Dckt. 144.

On June 15, 2018, Debtor filed this instant Motion to Vacate, claiming that his case was dismissed because he was mistaken about when to appear for the dismissal hearing, having arrived at 1:30 p.m. on the correct day, instead of at 10:00 a.m. for the dismissal calendar hearing. Dckt. 198.

Debtor seeks to have the order dismissing the case vacated, per Federal Rule of Civil Procedure 60(b).

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee filed an Opposition on July 2, 2018. Dckt. 201. The Chapter 13 Trustee argues first that three motions to vacate were filed; the original was withdrawn, and the Chapter 13 Trustee

believes that the final one (Dckt. 198) is the pending motion. With that in mind, the Chapter 13 Trustee argues that there has been no noticed filed for the latest amended motion.

Substantively, the Chapter 13 Trustee argues that Debtor's various allegations may not support a factual basis to find that dismissal was inaccurate because of unreasonable delay that is prejudicial to creditors. He notes that no payments were made in this case until February 2018, which was five months late. Also, no tax returns or document stating that they were not required to be filed were submitted until November 7, 2017, three months after the case was filed, when such documents were required within seven days of filing the petition.

REVIEW OF GROUNDS STATED WITH PARTICULARITY UPON WHICH RELIEF IS BASED

The Amended Motion to Vacate the Order Dismissing this case states the following grounds with particularity (Federal Rule of Bankruptcy Procedure 9013) upon which the requested relief is based:

A. "The Debtor was ordered to obtain legal counsel and, in compliance with the court's mandate, the debtor is now represented by attorney Bert Carter, Jr." Motion ¶ 2, Dckt. 198.

This appears to be an expansive, dramatic statement, with it being more accurate that the court observed that Debtor, having failed at multiple bankruptcy cases, appeared to need to engage counsel if he actually was attempting to prosecute his most recent bankruptcy case in good faith. In the Minutes from the February 21, 2018 hearing on the Motion to Dismiss, Dckt. 144 at 3, the actual statement of the court is:

> "The court continued the hearing to 10:00 a.m. on March 21, 2018, to allow Debtor a final-final-final chance to properly prosecute this case. Dckt. 89. Debtor professed that he would engage counsel, though his efforts in this case appear to be ephemeral. Dckt. 82."

It was Debtor who had been repeatedly requesting the court not to dismiss the case as Debtor was seeking to obtain counsel. As noted by the court, the purported efforts of Debtor appeared to be "ephemeral."

B. "When Attorney Carter was retained by the debtor, the debtor was informed by Attorney Carter that he had very recently experienced a major health issue and would be unable to make the debtor's next scheduled hearing on March 21, 2018." Motion ¶ 3, Dckt. 198.

Thus, after repeated requests not to dismiss the case because Debtor was "actively" working to obtain counsel, the one attorney in Northern California that Debtor obtained was too ill to attend the pending hearing.

C. The Trustee had filed the Motion to Dismiss because:

1. Debtor was delinquent by $667
2. Debtor failed to provide copies of tax returns

3. Debtor failed to provide employer payment advices and
4. Debtor failed to provide evidence of his Social Security Number.

Id. ¶ 8.

D. In opposition to the Motion to Dismiss Debtor filed documents showing he was current. Then on March 16, 2018, Debtor filed a response that "outlined the reasons" Debtor asserts he is not required to file tax returns. *Id.* ¶ 9–10

E. Debtor also asserted that he had no employer pay advices for his earnings in the sixty days prior to the commencement of the bankruptcy case. *Id.* ¶ 11.

F. It is asserted that Debtor provided the Chapter 13 Trustee with his Social Security Number. *Id.* ¶ 12.

G. It is alleged that on February 13, 2018, more than one month prior to the hearing on the Motion to Dismiss, the Chapter 13 Trustee "indicated" that Debtor had satisfied all of the grounds for which dismissal was sought. *Id.*, ¶ 13.

H. The reason Debtor did not show up at the March 21, 2018 hearing to advise the court that he was employing counsel was because Debtor thought the hearing was at 1:30 p.m. *Id.*, ¶ 5–6. (The court's Chapter 13 1:30 p.m. calendars are limited to motions for relief from the automatic stay and not any motions that would be initiated by a debtor or any other person than a creditor generally seeking to foreclose on property or evict a tenant from rental property.)

It is asserted that the "mistake," "surprise," or "excusable neglect" is that Debtor came to the court at the wrong time, all of the grounds for dismissal having been previously remedied.

APPLICABLE LAW

Federal Rule of Civil Procedure Rule 60(b), as made applicable by Federal Rule of Bankruptcy Procedure 9024, governs the reconsideration of a judgment or order. Grounds for relief from a final judgment, order, or other proceeding are limited to:

(1) mistake, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);

(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;

(4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or

(6) any other reason that justifies relief.

FED. R. CIV. P. 60(b). A Rule 60(b) motion may not be used as a substitute for a timely appeal. *Latham v. Wells Fargo Bank, N.A.*, 987 F.2d 1199, 1203 (5th Cir. 1993). The court uses equitable principles when applying Rule 60(b). *See* 11 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 2857 (3d ed. 1998). The so-called catch-all provision, Federal Rule of Civil Procedure 60(b)(6), is "a grand reservoir of equitable power to do justice in a particular case." *Uni-Rty Corp. V. Guangdong Bldg., Inc.*, 571 F. App'x 62, 65 (2d Cir. 2014) (citation omitted). While the other enumerated provisions of Rule 60(b) and Rule 60(b)(6) are mutually exclusive, relief under Rule 60(b)(6) may be granted in extraordinary circumstances. *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 863 & n.11 (1988).

A condition of granting relief under Rule 60(b) is that the requesting party show that there is a meritorious claim or defense. This does not require a showing that the moving party will or is likely to prevail in the underlying action. Rather, the party seeking the relief must allege enough facts that, if taken as true, allow the court to determine if it appears that such defense or claim could be meritorious. 12 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶¶ 60.24[1]–[2] (3d ed. 2010); *see also Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984).

Additionally, when reviewing a motion under Rule 60(b), courts consider three factors: "(1) whether the plaintiff will be prejudiced, (2) whether the defendant has a meritorious defense, and (3) whether culpable conduct of the defendant led to the default." *Falk*, 739 F.2d at 463 (citations omitted).

DISCUSSION

As an initial policy matter, the finality of judgments is an important legal and social interest. The standard for determining whether a Rule 60(b)(1) motion is filed within a reasonable time is a case-by-case analysis. The analysis considers "the interest in finality, the reason for delay, the practical ability of the litigant to learn earlier of the grounds relied upon, and prejudice to other parties." *Gravatt v. Paul Revere Life Ins. Co.*, 101 F. App'x 194, 196 (9th Cir. 2004) (citations omitted); *Sallie Mae Servicing, LP v. Williams (In re Williams)*, 287 B.R. 787, 793 (B.A.P. 9th Cir. 2002) (citation omitted).

The Order dismissing the case was a long time in coming, stretching over multiple hearings. As noted in the Minutes for the February 21, 2018 hearing on the Motion to Dismiss, the court noted that one of Debtor's arguments was that the court should not take as "accurate" statements he (a multiple bankruptcy case filer) states under penalty of perjury in his Schedules because he "did not understand." He also blamed his multiple prior bankruptcy failures on a prior attorney in the Northern District of California. Civil Minutes, p. 3; Dckt. 144.

The Minutes then turn to consider the substance of Debtor's Opposition. Even though he was not at the hearing, the court carefully reviewed the Opposition to see if Debtor was able to and was actually trying to prosecute the bankruptcy case in good faith. The court clearly considered the grounds now stated

in the Motion to Vacate the Order Dismissing the Case. The case was not dismissed merely because Debtor's non-appearance was a "default."

At the March 21, 2018 dismissal hearing, the court reviewed extensively how Debtor's schedules did not make financial sense, how the latest proposed plan was incredibly inconsistent with prior proposed plan terms (such as omitting arrears on secured claims and slicing the plan payments by more than half), how the proposals in various classes would require Debtor to actually provide more money to the plan, how no tax delinquencies were addressed, and how the pleadings were inadequate. Dckt. 144.

One of the troubling points is that Debtor (in addition to never buying clothes, never doing laundry, never having any medical or dental expenses, never buying any personal care products, and having only a $350 per month transportation expense for his 2008 Maserati and 1977 Rolls Royce) is that Debtor states that he does not have to pay federal or state income, self-employment, or Social Security taxes.

In support of the present Motion, Debtor provides his testimony under penalty of perjury. He testifies:

A. Debtor's father was a minister, and gave the 1977 Rolls Royce to Debtor. Declaration ¶ 4; Dckt. 20.

B. Debtor also owns a Maserati, as his extravagance, but has not been driving it because it needs repairs. *Id.*, ¶ 5. Because of the power of the Maserati, Debtor does not believe that it should be driven in stop and go traffic. *Id.*

C. Debtor began filing his bankruptcy cases in 2011 to stop an impending foreclosure on property he owned in Louisiana. *Id.*, ¶ 9.

D. Debtor filed the 2011 case under his former name, James Lawson, successfully completed it, cured the default on the Louisiana property, and got his discharge. That case number is 11-47631.

On this point, using the PACER system to access the federal courts to review the Northern District Court's file for Debtor's case 11-47631, the court confirms that Debtor received his discharge. The court also notes that the Chapter 13 Trustee's Final Report documents that Debtor funded the Plan with only $4,210. 11-47631, Dckt. 89. Of this, $1,431.76 was paid to JPMorgan Chase Bank and $2,246.93 to Midland Funding, LLC. *Id.*; Report at 2. Debtor's Chapter 13 Plan in that case required payments of only $175.00 per month for thirty-six months. *Id.*; Chapter 13 Plan, Dckt. 9. The one-page Chapter 13 Plan identified one creditor, Chase Home Finance having a $51,000 claim with a $5,412.36 arrearage. The only other payment to be made by Debtor was $450.00 per month for the Chase Home Finance current monthly payment.

On Debtor's Schedule A in Case 11-47631, he lists owning a single family residence in Bastrop, Louisiana, and being the "OWNER" of the property. No other owners are listed. *Id.*; Schedule A, Dckt. 10 at 3. On Schedule B, Debtor lists owning in July 2011 only a 1993 Ford. *Id.*; Schedule B at 6. On Schedules D, E, and F, Debtor lists having only one creditor, that claim secured by the Louisiana property.

On Schedule I, Debtor states that he is self-employed in Construction. *Id.*; Schedule I at 15. On Schedule I, Debtor states in 2011 that he does not have to pay any federal income tax, state income tax, self-employment tax (as a self-employed construction worker) or any other taxes concerning the income he is generating.

E. In 2015, Debtor said that he was called by a friend in Louisiana who told him that Chase was in the process of foreclosing on the Louisiana property. Declaration ¶ 13, Dckt. 200.

F. So, to stop that foreclosure sale Debtor filed bankruptcy case 15-42180. *Id.*, ¶ 14.

G. The Chapter 13 Trustee in case 15-42180 had the case dismissed due to the failure to provide tax returns, but then the judge set aside the dismissal. *Id.* ¶¶ 22, 25.

H. Debtor filed case 15-43169 when the court dismissed the first 2015 case, but allowed the second case to be dismissed when the court vacated the dismissing of the case 15-42180. *Id.*, ¶ 26.

I. Debtor blames the dismissal of case 15-43169 on his attorney for failing to file an amended plan. *Id.*, ¶ 31–32. Debtor asserts that he was not informed that his case had been dismissed, other than by a repossession agent coming to one of Debtor's vehicle. *Id.*, ¶ 33.

J. Debtor testifies that the Chapter 13 Trustee should take into account that Debtor disputes $7,570.00 in claims and actually has debt of only $3,500. Debtor has obtained a modification of the loan that was in default, taking care of the foreclosure that predated the bankruptcy filing. *Id.*, ¶¶ 45, 47, 48.

K. Debtor also testifies that he owns a one-third interest in property located at 5600 International Blvd., Oakland, California, and he wants to have the dismissal vacated so that he can seek sanctions against BDM Mortgage Services for violating the automatic stay. *Id.* ¶ 49.

This last point is a bit confusing; a violation of the stay is a violation of the stay. If it occurred and the act is taken in violation of the stay, mere dismissal does not validate an act that was taken in violation of the stay. Conversely, if a case was dismissed and the stay terminated, merely vacating the dismissal does not retroactively bring the stay back to life and make an act that did not violate the stay a violation of the stay. (The court leaves it to Debtor and Debtor's counsel to research this basic bankruptcy principle.)

Conspicuously absent in the Motion (there being no points and authorities) and the Declaration is any basis for concluding that Debtor is a tax-free person. Though it was clearly addressed in the court's ruling on the Motion to Dismiss as to why there did not appear to be any good faith prosecution of the case or ability to fund a plan, Debtor ignores it in this Motion to Vacate.

When this case was filed on August 15, 2017, Debtor stated under penalty of perjury on Schedule I that his occupation was "Construction," his employer was SRMBC, Inc. in Oakland, California, and he had

been employed for two months. Dckt. 10 at 25. Further, he stated under penalty of perjury that his gross income was $4,500 per month, for which there was no withholding for taxes or Social Security. *Id.* at 26. A search of the California Secretary of State website for corporation searches discloses that no corporations, limited liability companies, or limited partnerships with that name are registered in the State of California. FN.1.

FN.1.
https://businesssearch.sos.ca.gov/CBS/SearchResults?SearchType=CORP&SearchCriteria=srmbc&SearchSubType=Keyword

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In conducting a LEXIS NEXIS search trying to determine if the 5600 International Property was property of the bankruptcy estate (undisclosed property does not leave the bankruptcy estate even when the case is dismissed—see 11 U.S.C. § 349 and § 554, providing that only disclosed, schedule property is abandoned upon dismissal of the case), the court identified an entity named Saints Rest Missionary Baptist Church Incorporated that was shown as the title owner of the 5600 International Property at the time of the foreclosure in December 2017. The court noted that the first letters of each word in the Church's name formed the abbreviation SRMBC, Inc.

A check of the Secretary of State's website for Saints Rest Missionary Baptist Church Incorporated disclosed the following information: FN.2.

Registration Date:	10/24/1972
Jurisdiction:	CALIFORNIA
Entity Type:	DOMESTIC NONPROFIT
Status:	ACTIVE
Agent for Service of Process:	
	JAMES E. LAWSON, JR 14010 57TH AVENUE OAKLAND CA 94621
Entity Address:	
	8055 BEACHMONT WAY SACRAMENTO CA 95828
Entity Mailing Address:	
	8055 BEACHMONT WAY SACRAMENTO CA 95828

FN.2. https://businesssearch.sos.ca.gov/CBS/Detail

On Original Schedule B, Debtor states under penalty of perjury that he has no interests in any corporations, limited liability companies, or other businesses. Dckt. 10 at 7. He confirms this under penalty of perjury on his Statement of Financial Affairs, stating that he has no businesses. *Id.*, Question 27 at 10.

Then with the November 2017 filing of Amended Schedules, Debtor again states on Schedule B that he has no interests in any businesses. Question 19, Dckt. 42. He does amend his Statement of Financial Affairs to state that he is an officer, director, or managing executive of "Saints Rest MBC Inc." Question 27, *Id.* at 42.

Then in March 2018, he files his Second Amended Statement of Financial Affairs to state that in addition to being an officer, director, or manager, he is an owner of at least 5% of the voting or equity securities for "Saints' Rest Inc" and "Fresh Anointing CC, Inc. Question 21, Dckt. 113 at 12.

Debtor also filed an Amended Schedule I stating that he is employed as "CLERGY," changing it from "CONSTRUCTION" (emphasis in originals), for which he is paid $3,750 per month. *Id.* at 14. He then adds an additional $1,400 for "Daughter-Rent." *Id.* On Amended Schedule J, he lists his daughter, of an unstated age, as a dependent. *Id.* at 16. No explanation is provided for this change in his employment or what is meant by the word "CLERGY."

Denial of Motion

Debtor argues in the Motion that the justifiable mistake that warrants vacating dismissal of this case is that he appeared at the wrong hearing time. In Debtor's declaration, he actually does not make any reference at all to a mistake that would support grounds for vacating dismissal. In forty-nine paragraphs of the declaration, Debtor recounts various facts relating to issues in this case and prior cases, but none of those actually explain why the present Motion is warranted—other than he showed up at 1:30 p.m., instead of 10:00 a.m.

Now, with the assistance of counsel, Debtor ignores a critical consideration—his ability to prevail if the order dismissing the case is vacated. Debtor ignores the court's concerns about his fanciful budget and ignoring taxes. He appears to address his exemption from taxes by changing his employment from "CONSTRUCTION" to "CLERGY." No evidence is provided to the court of such an exemption, with no confirmation from either the state or federal taxing agencies.

With respect to not filing tax returns, Debtor did provide his declaration that he has not filed since 2012 through 2017 because his income is below the standard deduction plus one deduction. Dckt. 35. Other than the Debtor, at this late date, providing his current conclusion on this point, no evidence is presented supporting such conclusion.

Additionally, Debtor also states that he has no record of being paid to provide the Chapter 13 Trustee. Thus, it appears that the money Debtor gets is "under the table." The court is unaware of any churches or employers that do not document the payments to their clergy and provide records for payments made to clergy. Additionally the court is unaware, and Debtor has offered no credible evidence that there would be no records for payment to him for his employment in "CONSTRUCTION."

The nails in Debtor's arguments (sticking with Debtor's "CONSTRUCTION" employment) are placed by Debtor himself in his Declaration. He testifies that he has "obtained a loan modification" for the Louisiana property. Declaration ¶ 48, Dckt. 200. Then, a line that is obscured and made difficult to read (the court cannot yet determine if it was done intentionally or inadvertently, though it is the only line so obscured in the eight pages of text) states that first payment under the "loan modification" was made by somebody.

Declaration p. 7, in line obscured by footer. The Declaration continues, stating it is actually Debtor's daughter who will pay this secured claim. It is not stated whether this daughter responsible for making the payments on this debt is the same daughter Debtor lists as a dependent on Schedule J. If so, then it is questionable when Debtor states that he does not have to pay any taxes because his income is under that which would be required for two persons.

In reviewing the Docket for this case, no loan modification has been authorized by the court. Whatever Debtor has purported to have done appears to be of no force and effect, at least as to the law as enacted by Congress.

Review of Schedules and Financial Information

Looking at the latest Amended Schedules I and J, Dckt. 113, there does not appear to be accurate information provided by Debtor. As noted above, Debtor's CONSTRUCTION job has been changed to an occupation of CLERGY. No testimony is provided as to how he has made this transformation and when he became "CLERGY." The court also notes that the entity for which he now asserts he is employed as "CLERGY" is one that he has been the agent for service of process for apparently years.

The Amended Schedule I also provides for Debtor to be paid "rent" in the amount of $1,400 from a "Daughter." On Amended Schedule J, Debtor purports that this (a) daughter of unstated age is dependent on him. Dckt. 116 at 13. If the daughter is a dependent, how is she supporting Debtor by making a $1,400 a month "rent" payment? Additionally, the daughter is financially strong enough to "assume" (term used in Debtor's Declaration) to take over paying the debt secured by the Louisiana property. hat does not sound in the name of a dependent child.

Debtor states on Amended Schedule J that his rent or mortgage expense is only $296.17 per month, with the additional expenses of $26.00 for property taxes and $76.00 for insurance. *Id.* Debtor's Petition states that he lives on Locust Drive in Vallejo, California. Dckt. 1 at 2. On Schedule J, Debtor states that his daughter lives with him—which would be at the Vallejo address. Amended Schedule J, Dckt. 113. The court is unsure as to what rental property in California could be obtained for a father and, apparently adult, daughter for $296.17.

Looking at the latest Amended Schedule A/B, Debtor lists owning property in Los Angeles and in Louisiana, and no other property. Dckt. 42 at 3. On Schedule G filed by Debtor (no amended Schedule G filed), Debtor states that he is not a party to any unexpired leases. Dckt. 10 at 23.

On the Statement of Financial Affairs, Debtor states under penalty of perjury the following information:

A. During the three years prior to filing of this bankruptcy case on August 15, 2017, he has not lived at any other address than the Solano address stated on the Petition. Question 2, Dckt. 42 at 15. This is an inaccurate statement based on the information provided under penalty of perjury by Debtor in his recent bankruptcy filings in the Northern District of California.

B. Debtor was given "DONATIONS" in the amount $6,700 in 2017 and $10,300 from unstated sources. Question 5, *Id.* at 16.

Northern District Filings by Billie Dee/James Lawson

The court has gone back to review the files of Byllie Dee and James Lawson of the Northern District of California Bankruptcy Court using the PACER System. For the cases filed in the three-year period to the August 15, 2017 filing of this case, the court found the following:

A. Chapter 13 Case 16-41813

1. Filed.....June 29, 2016
2. Dismissed.....July 15, 2016

3. Debtor's Address.....Locust Dr., Vallejo, California

B. Chapter 13 Case 16-42054

1. Filed.....July 22, 2016
2. Dismissed

3. Debtor's Address.....Locust Dr., Vallejo, California

4. Property Listed on Schedule A/B; 16-42054, Dckt. 1.

a. Real Property

(1) Louisiana Property Only

b. Personal Property

(1) Infinite G-37

(2) Range Rover HSE

(3) 2007 Maserati

5. Schedule I, *Id.*

a. Income From Construction Business

(1) $3,720

6. Schedule J, *Id.*

a. Dependents.....None

b. Rent.....$763

c. Clothing, Laundry.....$0.00

d. Personal Care.....$0.00

e. Medical/Dental.....$0.00

7. Amended Petition filed August 17, 2016; *Id.*, Dckt. 24 at 2.

a. Address changed to Fairview Street, Oakland, California

(1) Locust Drive address shown as "mailing address."

8. Amended Schedule I filed August 17, 2016, *Id.* at 12-13

a. Lists $3,720 net business income and an additional $3,720 income from "Odd Jobs."

9. Declaration re Tax Returns filed August 17, 2016; *Id.*, Dckt. 25

a. Debtor states that he has not had to file income tax returns since at least 2000 "because Debtor has not had any taxable income." No reason why $3,720 in net business income (or $7,480 if there is also Odd Job income) monthly is not taxable.

C. Chapter 13 Case 15-42180

1. Filed.....July 13, 2015
2. Dismissed.....May 9, 2016

3. Debtor's Address on Petition, 15-42180, Dckt. 1

a. Street Address.....Fairview Street, Oakland, CA

b. Mailing Address..... P.O. Box, Oakland, CA

4. Property

a. Schedule A, *Id.* at 8.

(1) Louisiana Property Only

b. Schedule B, *Id.* at 10-12

(1) Range Rover

5. Schedule I, *Id.* at 19-20

a. Occupation "Services"

b. Employer "Greater Faith MBC"

c. Gross Wages.....$3,700

d. Withholding for Taxes.....($347)

6. Schedule J; *Id.* Part 2 at 1-2

a. Rent.....($763)
b. Car Payment.....($672)

7. Statement of Financial Affairs, *Id.* at 17-22

a. Question 1 - Income from Employment, First Half of 2015

(1) $22,200

(2) No information for prior years

b. Question 16 - Spouses or Former Spouses Within Prior 8 years

(1) None

D. Chapter 13 Case 15-43169

1. Filed.....November 4, 2015
2. Dismissed.....November 9, 2015

3. Address for Debtor on Petition; 15-43169, Dckt. 1

a. Street Address.....Fairview St, Oakland, CA
b. Mailing Address.....PO Box, Oakland, CA

E. Chapter 13 Case 11-47631 (Filed in the name "James Lawson")

1. Filed.....July 19, 2011
2. Discharge Entered.....May 1, 2014 (36 month plan)

3. Address for Debtor on Petition; 11-47631, Dckt. 1

a. Street Address.....Louisiana property
b. Mailing Address.....PO Box, Oakland, CA

4. Property

a. Real, Schedule A; *Id.* at 3

(1) Louisiana property

b. Personal, Schedule B; *Id.* at 4-6

(1) Cash.....None
(2) Checking/Savings....None
(3) Investments.....None
(4) Vehicles
(a) 1993 Ford

5. Income

a. Schedule I, *Id.* at 15-16

(1) Self-Employed Construction

(a) $3,000 gross

These documents filed under penalty of perjury by Debtor in the prior cases show that at least some of the information provided by Debtor under penalty of perjury in this case is not accurate. Debtor had a different residence address within the three years prior to the August 15, 2017 filing of the current case. Debtor has stated under penalty of perjury that he has no dependents, but now says that he has a daughter of unstated age that is a dependent. Debtor has had a business, not had a business. Debtor has withholding for taxes, but states that he has not filed any tax returns before 2000. (The court notes that even if Debtor did not owe taxes, if taxes were withheld, a return would be filed to obtain a tax refund.)

Review of Chapter 13 Plan

Debtor and his counsel have not provided the court with a plan they intend to prosecute in this case if the dismissal is vacated. A review of the prior Amended Plan filed by Debtor in this case provides information relevant to consideration of the present Motion. The Amended Plan terms in pertinent part provided:

A. Monthly Plan Payment.....$352.27

B. Plan Term.....Sixty Months

C. Class 1 Claim

1. Apollo Auto Claim, $12,000 arrearage

a. Monthly Payment.....$254.19

Apollo Auto Finance filed Proof of Claim No. 2 in this case. The secured claim is stated to be in the amount of $12,030.88, with the Maserati collateral having a value of $20,495.00. The stated interest rate on the obligation is 19.99% (which a good faith debtor would seek to adjust in any plan) and that the pre-petition default was $1,514.88.

The Retail Installment Contract attached to Proof of Claim No. 2 is dated September 27, 2014. The financing is for 48 months, with the first monthly payment of $757.44 due October 27, 2014, and the final payment due September 27, 2018 (a mere two months after the current hearing date).

The Retail Installment Contract shows that Debtor purchased the Maserati in September 2014 for $41,995, plus tax and license. Debtor, who states that since 2000 he has not made enough money to be obligated to file tax returns, put a **cash** down payment of $21,500 and financed $24,895.24 of the Maserati purchase price. (Terms as stated in the Retail Installment Contract.)

Looking at Debtor's 2011 bankruptcy case in the Northern District, the court cannot see how several months after that case was completed Debtor had $20,000+ in cash for a down payment on a Maserati, and then obtain $20,000+ in additional credit for that "extravagance" (as described by Debtor).

D. Class 2 Secured Claims.....None

E. Class 4 Secured Claims

1. Shellpoint (Louisiana Property)

a. Unidentified Daughter payment of $296.17

F. Class 7 General Unsecured Claims

1. $7,570.....100% Dividend

As noted by the Chapter 13 Trustee, Debtor did not and, based on Amended Schedules I and J, cannot fund the plan to properly provide for these claims. Debtor's financial "information" appears to be a continuation of fanciful conjecture structured to create a reorganization. Debtor's information has not stayed consistent through his odyssey of bankruptcy cases. Debtor fails to provide the court with any colorably credible testimony of his rent, having acquired a dependent daughter, that apparently dependent daughter now paying rent and paying the debt secured by the Louisiana property. The financial situation gets even worse for Debtor in that now he will also have to fund the attorneys' fees.

Debtor has failed to carry his burden in seeking the court vacate the order of dismissal. The court continued the hearing on the Motion to Dismiss several times. Debtor did not prosecute. Then, after it was dismissed, the only attorney Debtor purports to be able to employ was disabled at the time of employment.

Therefore, in light of 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 Vacate filed by Byllie Dee ("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.

Dept. B. Tentative Matters

48. **18-23887-B-13** **TIMOTHY NEHER** **MOTION TO EXTEND AUTOMATIC STAY O.S.T.**
TLN-2 **Pro Se** **7-10-18 [24]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and parties requesting special notice on July 6, 2018. By the court's calculation, 11 days' notice was provided. The court set the hearing for 3:00 p.m. on July 17, 2018. Dckt. 29.

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

The Motion to Extend the Automatic Stay is granted.

Timothy Neher ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 17-23129) was dismissed on June 20, 2018, after Debtor failed to confirm a plan by a deadline. *See* Order, Bankr. E.D. Cal. No. 17-23129, Dckt. 338, June 20, 2018. 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.

In Debtor's Declaration, he states under penalty of perjury that he has personal knowledge of all the facts in the Declaration, but then, instead of presenting facts in the Declaration, he simply states that everything stated in the Motion is true. Dckt. 26. Here, the Motion argues that the instant case was filed in good faith and explains that the previous case was dismissed because proposed plan payments at the

beginning of the plan in the prior case did not sufficiently provide for secured claims, and Debtor's schedules were completed incorrectly so that it appeared that Debtor did not have sufficient income. In this case, Debtor argues that the proposed plan already calls for payments to be made immediately, and he argues that the schedules have been filled out to show that there is sufficient income to support plan 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 argues that no sale or repossession has been scheduled for any of his property, but Debtor wants to retain his property, and so, he seeks that the automatic stay be extended. Debtor has sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

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

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

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

The Motion to Extend the Automatic Stay filed by Timothy Neher ("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.

FINAL RULINGS

49.	**16-27049-E-13**	**RAYMOND/MELODY SMITH**	**MOTION TO MODIFY PLAN**
	KWS-1	**Kyle Schumacher**	**5-24-18 [41]**

Final Ruling: No appearance at the July 17, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 29, 2018. By the court's calculation, 49 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).

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 Modified Plan is granted.

Raymond Smith and Melody Smith ("Debtor") seek confirmation of the Modified Plan because of changes to their monthly budget including an increase of monthly rent and additional costs for life and health insurance. Additionally, Debtor Melody Smith underwent surgery in April 2018 and is currently on state disability until approximately September 2018. Dckt. 43. The Modified Plan calls for $9,360.00 to have been paid through May 2018 followed by monthly payments of $645.00 for the remainder of the plan term. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S LIMITED OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed a Limited Opposition on June 28, 2018. Dckt. 53. The Chapter 13 Trustee asserts that Debtor's statement of $9,360.00 paid through May 2018 is incorrect and should be $9,880.00. The Chapter 13 Trustee has no opposition to confirming the modified plan and correcting the paid total to $9,880.00.

DEBTOR'S REPLY

Debtor filed a Reply on July 11, 2018. Dckt. 56. Debtor proposes amending Section 7.01 of the Modified Plan to read that $9,880.00 has been paid through May 2018.

RULING

The Modified Plan, as amended to reflect that $9,880.00 has been paid through May 2018, 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 Raymond and Melody Smith ("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 24, 2018, as amended to reflect that $9,880.00 has been paid through May 2018, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick ("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.

50. 18-22713-E-13 **DAMION HRIBIK** **OBJECTION TO CONFIRMATION OF**
DPC-1 **Gary Ray Fraley** **PLAN BY DAVID P. CUSICK**
6-18-18 [42]

Final Ruling: No appearance at the July 17, 2018 hearing is required.

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 June 18, 2018. By the court's calculation, 29 days' notice was provided. 14 days' notice is required.

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

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 Objection to Confirmation of Plan is overruled.

David Cusick ("the Chapter 13 Trustee") opposes confirmation of the Plan on the basis that it relies upon the court granting a related motion to value, and without granting that motion, the Plan would be infeasible.

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of Schools Financial Credit Union. That motion was presented to the court at the June 26, 2018 hearing, with the Order having been entered. Dckt. 49.

With the Chapter 13 Trustee's ground having been resolved at the June 26, 2018 hearing, the Objection is overruled.

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 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 is overruled, and Damion Hribik's ("Debtor") Chapter 13 Plan filed on May 15, 2018, 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.

51. 18-22707-E-13 DPC-2 | **MICHAEL/PHYLLIS ENOS** **Peter Cianchetta** | **OBJECTION TO DEBTORS' CLAIM OF EXEMPTIONS** **6-14-18 [16]**

Final Ruling: No appearance at the July 17, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on June 14, 2018. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

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

David Cusick ("the Chapter 13 Trustee") objects to Michael Enos and Phyllis Enos's ("Debtor") claimed exemptions under California law because Debtor claimed 100% of fair market value for an exemption of CalPERS in the amount of $26,622.44, instead of claiming specific dollar amounts. California Code of Civil Procedure § 703.140(b)(2)–(5) does not allow claiming 100% of fair market value and requires the claimant to list actual values. A review of Debtor's Schedule C shows that real dollar amounts have not been claimed. The Chapter 13 Trustee's Objection is sustained, and the claimed exemptions are disallowed.

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

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

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

IT IS ORDERED that Objection is sustained, and the claimed exemption for CalPERS under California Code of Civil Procedure § 703.140(b)(10)(E) is disallowed in its entirety.

52. 18-22511-E-13 DPC-1 **HUONG MCGUIRE** **Werner Ogsaen** **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 6-13-18 [31]**

Final Ruling: No appearance at the July 17, 2018 hearing is required.

The Objection to Confirmation is dismissed without prejudice.

David Cusick ("the Chapter 13 Trustee") having filed an Ex Parte Motion to Dismiss the pending Objection on July 9, 2018, Dckt. 38; no prejudice to the responding party appearing by the dismissal of the Objection; the Chapter 13 Trustee having the right to request dismissal of the objection pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Huong McGuire ("Debtor"); **the Ex Parte Motion is granted, the Chapter 13 Trustee's Objection is dismissed without prejudice, the court removes this Objection from the calendar, and the Chapter 13 Plan filed on May 4, 2018, 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.

53. **18-21418-E-13** **VELMA WALL** **MOTION TO CONFIRM PLAN**
SDH-3 **Scott Hughes** **5-29-18 [33]**

Final Ruling: No appearance at the July 17, 2018 hearing is required.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm Plan having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is dismissed as moot, the case having been dismissed.

54. **18-20119-E-13** **CHEREESE CAMACHO** **MOTION TO CONFIRM PLAN**
RJ-1 **Richard Jare** **5-23-18 [41]**

Final Ruling: No appearance at the July 17, 2018 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, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on May 23, 2018. By the court's calculation, 55 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. Chereese Camacho ("Debtor") has provided evidence in support of confirmation. David Cusick ("the Chapter 13 Trustee") filed a on June 22, 2018. Dckt. 53. 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 Chereese Camacho ("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 May 23, 2018, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to

David Cusick ("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.

55. **16-25321-E-7** **JAY COHEN** **CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY**
CJO-1 **Steele Lanphier** **3-19-18 [133]**

U.S. BANK TRUST, N.A. VS.

Final Ruling: No appearance at the July 17, 2018 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 7 Trustee, and Office of the United States Trustee on March 19, 2018. By the court's calculation, 31 days' notice was provided. 28 days' notice is required.

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

The Motion for Relief from the Automatic Stay is granted.

U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust by Caliber Home Loans, Inc., as attorney in fact ("Movant") seeks relief from the automatic stay with respect to Jay Cohen's ("Debtor") real property commonly known as 9029 Boise Court, Sacramento, California ("Property"). Movant has provided the Declaration of Melba Arredondo to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Arredondo Declaration states that there are eighteen post-petition defaults in the payments on the obligation secured by the Property, with a total of $33,239.16 in post-petition payments past due. The Declaration also provides evidence that there are five pre-petition payments in default, with a pre-petition arrearage of $9,233.10.

ORDER CONTINUING HEARING

Pursuant to a joint *ex parte* stipulation between the parties, the court entered an order on April 2, 2018, continuing the hearing to 3:00 p.m. on July 17, 2018. Dckt. 149.

From the evidence provided to the court, and only for purposes of this Motion for Relief, the total debt secured by this property is determined to be $289,671.03 secured by Movant's first deed of trust, as stated in the Arredondo Declaration and Schedule D. The value of the Property is determined to be $350,000.00, as stated in Amended Schedule A. Dckt. 185. When the Motion was filed, Movant relied upon the current assertion of value, which was $210,000.00. Dckt. 1.

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

A debtor has no equity in property when the liens against the property exceed the property's value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. 11 U.S.C. § 362(g)(2); *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988). Based upon the evidence submitted, the court determines that there is no equity in the Property for either Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Property is *per se* not necessary for an effective reorganization. *See Ramco Indus. v. Preuss (In re Preuss)*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

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

No other or additional relief is granted by the court.

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

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

The Motion for Relief from the Automatic Stay filed by U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust by Caliber Home Loans, Inc., as attorney in fact ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust by Caliber Home Loans, Inc., as attorney in fact, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed that is recorded against the real property commonly known as 9029 Boise Court, Sacramento, California, ("Property") to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale to obtain possession of the Property.

No other or additional relief is granted.

56. **11-44540-E-13** **MERCEDES PEREZ** **MOTION TO AVOID LIEN OF**
PLC-4 **Peter Cianchetta** **ANTONIO J. CARDONA**
6-14-18 [236]

Final Ruling: No appearance at the July 17, 2018 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 May 29, 2018. By the court's calculation, 49 days' notice was provided. 28 days' notice is required.

The Motion to Avoid Judicial Lien 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 Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Antonio Cardona ("Creditor") against property of Mercedes Perez ("Debtor") commonly known as 6 Fourth Avenue, Isleton, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $110,603.57. An abstract of judgment was recorded with Sacramento County on November 30, 2001, that encumbers the Property.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $150,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total $176,800.00 as of the commencement of this case are stated on Debtor's Amended Schedule D. Dckt. 111. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(1) in the amount of $20,000.00 on Schedule C. Dckt. 1.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor's exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT-DRAFTED ORDER

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Mercedes Perez ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of Antonio Cardona, California Superior Court for Sacramento County Case No. 00PR0515, recorded on November 30, 2001, Book 20011130 and Page 1383, with the Sacramento County Recorder, against the real property commonly known as 6 Fourth Avenue, Isleton, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

57. **18-20143-E-13 SLE-2** | **LAURO/DANELLE AVILA** **Steele Lanphier** | **MOTION TO VALUE COLLATERAL OF GATEWAY ONE LENDING FINANCE 6-6-18 [48]**

Final Ruling: No appearance at the July 17, 2018 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 June 5, 2018. 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). 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 Gateway One Lending Finance ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $3,940.00.

The Motion filed by Lauro Avila and Danelle Avila ("Debtor") to value the secured claim of Gateway One Lending Finance ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2006 Acura TL ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $3,940.00 as of the petition filing date. Dckt. 50. 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).

CHAPTER 13 TRUSTEE'S NON-OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed a Non-Opposition on July 2, 2018. Dckt. 67. The Chapter 13 Trustee notes that Creditor filed Proof of Claim No. 3-2 on February 8, 2018, indicating a secured amount of $3,940.00.

RULING

The lien on the Vehicle's title secures a purchase-money loan incurred on March 1, 2014, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $4,387.72. Claim #3. 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 $3,940.00, the value of the collateral. Dckt. 50; *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 Lauro Avila and Danelle Avila ("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 Gateway One Lending Finance ("Creditor") secured by an asset described as 2006 Acura TL ("Vehicle") is determined to be a secured claim in the amount of $3,940.00, 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 $3,940.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

58. **18-20143-E-13 SLE-1** | **LAURO/DANELLE AVILA** **Steele Lanphier** | **AMENDED MOTION TO CONFIRM PLAN** **5-18-18 [39]**

Final Ruling: No appearance at the July 17, 2018 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 May 17, 2018. 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 hearing on the Motion to Confirm the Amended Plan is continued to 3:00 p.m. on July 31, 2018.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Lauro Avila and Lucille Avila ("Debtor") have provided evidence in support of confirmation. No opposition to the Motion has been filed by David Cusick ("the Chapter 13 Trustee") or by creditors.

The court notes that the Amended Plan relies upon the court valuing two related motions to value. *See* Dckt. 48, 60. One was set for hearing on July 17, 2018, and another was set for hearing on July 31, 2018. *See* Dckt. 49, 61. The court cannot determine if the Amended Plan is feasible until it rules on both of those motions. Therefore, the hearing on this Motion is continued to 3:00 p.m. on July 31, 2018.

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 Lauro Avila and Lucille Avila ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Motion is continued to 3:00 p.m. on July 31, 2018.

59. **17-27449-E-13 RJM-1** | **BONITA MELENDEZ** **Rick Morin** | **OBJECTION TO NOTICE OF POSTPETITION MORTGAGE FEES, EXPENSES, AND CHARGES** **6-12-18 [47]**

Final Ruling: No appearance at the July 17, 2018 hearing is required.

Bonita Melendez ("Debtor") 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 Notice of Postpetition Mortgage Fees, Expenses, and Charges was dismissed without prejudice, and the matter is removed from the calendar.**

60. **17-27449-E-13 RJM-2** | **BONITA MELENDEZ** **Rick Morin** | **OBJECTION TO CLAIM OF BANK OF AMERICA, N.A., CLAIM NUMBER 3 6-12-18 [51]**

Final Ruling: No appearance at the July 17, 2018 hearing is required.

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

Sufficient Notice Not Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Debtor, Chapter 13 Trustee, and Office of the United States Trustee on June 12, 2018. By the court's calculation, 35 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

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

The Objection to Proof of Claim Number 3-1 of Bank of America, N.A., is overruled as moot, Creditor having amended its claim.

Bonita Melendez, Chapter 13 Debtor, ("Objector") requests that the court disallow the claim of Bank of America, N.A. ("Creditor"), Proof of Claim No. 3-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of $162,000.98. Objector asserts that in Objector's prior bankruptcy case, No. 14-28030, there was an objection to Creditor's proof of claim for two charges totaling $650.00 that was sustained, with the charges disallowed. 14-28030, Dckt. 64.

Now, Objector argues that those charges are included in Creditor's proof of claim. Objector argues that *res judicata* should apply in this case to disallow the charges that were previously disallowed.

Filing of Proof of Claim No. 3-2

On June 28, 2018, Creditor filed Proof of Claim No. 3-2, listing a secured claim of $161,350.98. The court notes that the reduction is in the amount of $650.00, the objected-to amount.

INSUFFICIENT SERVICE PROVIDED

Objector provided thirty-five days' notice of this Motion. Federal Rule of Bankruptcy Procedure 3007(a) requires a minimum of thirty days' notice of the hearing, and Local Bankruptcy Rule 3007-1(b)(1) requires an additional fourteen days for parties to file written opposition. Those time periods do not run concurrently. Those two minimums total forty-four days. Objector has provided nine fewer days than the minimum.

While the court could overrule the Objection without prejudice due the procedural error, the court notes that Creditor's filed amended proof of claim has cured this matter such that it essentially agrees with the Objection. The court will waive the service defect for Objector this one time and will rule on the Objection.

DISCUSSION

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

Creditor having filed Proof of Claim No. 3-2 and having reduced its claim by $650.00, the court interprets that action as agreeing with Objector that the claim should be reduced. Creditor has not responded to this Objection, but there is no dispute between the parties. The issue raised has been resolved. The Objection to the Proof of Claim is overruled as moot, Creditor having amended its claim and having reduced the claim by $650.00.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Bank of America, N.A. ("Creditor"), filed in this case by Bonita Melendez, Chapter 13 Debtor, ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Proof of Claim Number 3-1 of Bank of America, N.A., is overruled as moot, Creditor having amended its claim.

61. **17-25471-E-13 RDS-1** **CARL YOUNG** **Richard Steffan** **OBJECTION TO CLAIM OF MBC VENTURES, LLC, CLAIM NUMBER 1-1 5-16-18 [30]**

Final Ruling: No appearance at the July 17, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor and Chapter 13 Trustee on May 16, 2018. By the court's calculation, 62 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

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

The Objection to Proof of Claim Number 1-1 of MBC Ventures LLC is overruled as moot.

Carl Young, Jr., Chapter 13 Debtor, ("Objector") requests that the court disallow the claim of MBC Ventures, LLC ("Creditor"), Proof of Claim No. 1-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured, but it does not state what amount of the claim is secured; the total claim amount is listed as $137,612.55. Objector asserts that the claim should be listed as unsecured.

DISCUSSION

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

No party has responded to this Objection, but on July 10, 2018, Creditor amended its claim by filing Proof of Claim No. 1-2. Now, Creditor claims that the total amount of the debt owed to it is $137,612.55, but the debt is listed as wholly unsecured. Apparently, Creditor agrees with Objector that the claim is only unsecured.

Based upon Creditor filing an amended proof of claim that lists its claim as unsecured debt only, the Objection to the Proof of Claim is overruled as moot, having been withdrawn and replaced by Proof of Claim No. 1-2 that asserts only an unsecured debt.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of MBC Ventures LLC ("Creditor"), filed in this case by Carl Young, Jr., Chapter 13 Debtor, ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Proof of Claim Number 1-1 of MBC Ventures LLC is overruled as moot, Creditor having filed Proof of Claim Number 1-2 asserting that its claim is fully unsecured.

62. 18-21672-E-13 JOSE/JEANNETTE PAGTALUNAN MOTION TO CONFIRM PLAN
SDH-2 Scott Hughes 5-31-18 [31]

Final Ruling: No appearance at the July 17, 2018 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 29, 2018. 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 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. Jose Pagtalunan and Jeannette Pagtalunan ("Debtor") have provided evidence in support of confirmation. David Cusick ("the Chapter 13 Trustee") filed a Non-Opposition on June 22, 2018. Dckt.49 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 Jose Pagtalunan and Jeannette Pagtalunan ("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 May 31, 2018, is confirmed. Debtor's Counsel shall prepare

an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick ("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.

63. **18-23072-E-13** **STEVEN/SHARON COLLINS** **OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A.**
NLL-2 **Pro Se** **6-21-18 [28]**

Final Ruling: No appearance at the July 17, 2018 hearing is required.

Wells Fargo Bank, N.A. ("Creditor") 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, and the matter is removed from the calendar.**

64. **18-22178-E-13** **BLAIRE KNIGHT** **MOTION TO CONFIRM PLAN**
MC-1 **Muoi Chea** **5-29-18 [24]**

Final Ruling: No appearance at the July 17, 2018 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 May 22, 2018. 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 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. Blaire Knight ("Debtor") has provided evidence in support of confirmation. David Cusick ("the Chapter 13 Trustee") filed a Non-Opposition on July 3, 2018. Dckt. 42. 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 Blaire Knight ("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 May 29, 2018, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick ("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.

65. **18-21888-E-13** **LINDA SMITH-MCCLELLAN** **MOTION TO MODIFY PLAN**
HLG-1 **Kristy Hernandez** **5-31-18 [19]**

Final Ruling: No appearance at the July 17, 2018 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 31, 2018. By the court's calculation, 47 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy 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. Linda Smith-McClellan ("Debtor") has filed evidence in support of confirmation. David Cusick ("the Chapter 13 Trustee") filed a Response indicating non-opposition on June 28, 2018, although he did note a problem with the wording in the Notice of Hearing, which Debtor addressed by filing an Amended Notice. Dckt. 24. 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 Linda Smith-McClellan ("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 30, 2018, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick ("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.

66.	**18-21993-E-13** **DPC-1**	**MICHAEL HATCHER** **James Keenan**	**CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **5-9-18 [12]**

Final Ruling: No appearance at the July 17, 2018 hearing is required.

David Cusick ("the Chapter 13 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, and the matter is removed from the calendar**. The court entered an order confirming the plan on July 9, 2018. Dckt. 25.