

**UNITED STATES BANKRUPTCY COURT**  
Eastern District of California

**Honorable Ronald H. Sargis**  
**Chief Bankruptcy Judge**  
**Sacramento, California**

**July 21, 2020 at 2:00 p.m.**

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| <b>1.</b> | <b><u>20-23209-E-13</u></b><br><b><u>HDR-1</u></b> | <b>ANDREW/DIANE GARCIA</b><br><b>Harry D. Roth</b> | <b>MOTION TO EXTEND AUTOMATIC</b><br><b>STAY</b><br><b>6-30-20 [8]</b> |
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**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).**

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on July 1, 2020. By the court's calculation, 20 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, -----  
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| <b>The Motion to Extend the Automatic Stay is denied.</b> |
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Andrew Garcia and Diane Garcia ("Debtor") seek 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. 18-27077) was dismissed on March 17, 2020, after Debtor failed to be current on plan payments or file a modified plan by March 10,

2020. *See* Order, Bankr. E.D. Cal. No. 18-27077, Dckt. 72, March 17, 2020. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

In reviewing the Motion, it fails to state with particularity the grounds upon which the relief is requested as required by Federal Rule of Bankruptcy Procedure 9013. Rather, the two debtors instruct the court to “This Motion is based on the attached Notice of Motion, the attached Points and Authorities, Declaration of the Debtor, exhibit(s), and all the schedules, statements and documents filed in this case,” (Motion; Dckt. 8; p.1 at 24-26), and direct the court to assemble for the Debtor whatever grounds the court believes Debtor should state in prosecuting this Motion and Debtor’s bankruptcy case. Such assignment to have the court advocate for a party is improper.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because Debtor could not afford making plan payments and pay for food, household supplies, and other living essentials. Declaration, Dckt. 10. Debtor has now freed up household expenses. *Id.* Additionally, Debtor’s niece now lives with them and in lieu of paying rent, Debtor’s niece pays for food for the household. *Id.* Furthermore, Debtor has received a modest increase in pension and social security income. *Id.*

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 Specific Facts and Evidence

Debtor Diane Garcia provides her declaration as evidence in support of the Motion. Dckt. 10. Ms. Garcia provides no specific factual testimony, only her conclusions that they could not make the prior plan payments and pay their necessary living expenses. Declaration, ¶ 6; *Id.* Then, that Debtor has been able to “free up some of the household costs.” *Id.*

From looking at Schedules I and J, and not including the anonymous niece, the Debtor’s household consists of the two debtors and a seventy-year old sister. Dckt. 1 at 39-42; *Id.* Debtor also states under penalty of perjury that they have custody of two grandchildren and receive TANF grant monies for the grandchildren’s expenses, and that neither the TANF monies or the grandchildren’s expenses are included in Schedules I and J. *Id.*

The income shown on Schedule I is the two debtors Social Security Income of \$1,948, the two debtor’s retirement income of \$587, the adult Sister’s Social Security Income of \$860, and the adult Sister’s SSI Disability of \$366, for total gross income of \$3,761 a month.

Going to Schedule J, the information provided under penalty of perjury by the two debtors and filed by their counsel is questionable on several points, including the following expenses stated under penalty of perjury by the two debtors:

A. Home Maintenance and Repair.....\$0.00

Debtor states under penalty of perjury have \$0.00 of such expense notwithstanding owning real property and providing for the payment of the currently monthly payment and cure of a (\$27,146) arrearage in their Chapter 13 Plan (Class 1, Dckt. 4).

B. Food and Housekeeping Supplies for Three Adults.....\$150

In her Declaration, debtor Diane Garcia only makes an ambiguous, vague reference that some unidentified niece is paying for the food for the household. Ms. Garcia does not testify as to how much is being paid, but does stated under penalty of perjury that the household food expense is \$150 a month. For three adults, after deducting only \$50 for housekeeping supplies, that is only \$0.37 per person per meal in a thirty day month. Such is clearly unreasonable.

C. Medical and Dental Expenses.....\$25

For these three Social Security recipients, one of whom is on disability as well, Debtor states that these three persons have medical and dental out of pocket expenses of only \$8 a month. This too appears highly unreasonable, and for which Debtor has chosen not to provide any testimony.

D. Transportation Expenses.....\$100

Debtor lists owning and operating a 2007 Chrysler 300. Schedule A/B; Dckt. 1 at 23. The insurance payment on this vehicle is stated on Schedule J to be \$100 a month. *Id.* at 42. Monthly fuel, registration, maintenance, and repair on a fourteen-year old vehicle of \$100 does not appear to be reasonable.

Schedule J, Dckt. 1 at 41-42.

Looking at the most recent of Debtor's attempted, but dismissed, Chapter 13 cases, in case 18-27077 Debtor stated under penalty of perjury conflicting information, including:

- A. Food and Housekeeping Supplies for Three Adults.....\$340
- B. Transportation.....\$200
- C. Vehicle Insurance.....\$160

18-27077; Amended Schedule J, Dckt. 41 at 7-8.

Going back to another recent, and dismissed, Chapter 13 case filed by Debtor, No. 17-24058, Debtor provided consistent expense information, including \$340 for food, \$200 for transportation, and \$164 for vehicle insurance. 17-24058; Amended Schedule J, Dckt. 19 at 28-29.

Throughout all of these various Schedules J filed by Debtor, under penalty of perjury, Debtor consistently states that Debtor has no household maintenance or repair expenses for the house Debtor owns and is trying to cure a substantial arrearage on through the bankruptcy plans.

Debtor has not sufficiently demonstrated the case was filed in good faith/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 repeatedly failed in Chapter 13, and the reason may well be that the expenses listed on Schedule J are "wish they were" expenses and not actual expenses. Debtor also chooses to keep secret the income received for and the expenses of two dependent grandchildren. The court has no idea of where or how much "extra, undisclosed income" the Debtor is expending.

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 Andrew Garcia and Diane Garcia ("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 ruling does not apply to the automatic stay arising under 11 U.S.C. § 362(a) as it applies to persons or entities other than the Debtor, including property of the bankruptcy estate.

**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).**

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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 23, 2020. By the court’s calculation, 28 days’ notice was provided. 14 days’ notice is required.

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

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

Toyota Motor Credit Corporation dba Lexus Financial Services (“Creditor”) holding a secured claim opposes confirmation of the Plan on the basis that Debtor’s Plan adjusts the interest rate of a secured claim.

## DISCUSSION

Creditor’s objections are well-taken.

### Interest Rate

Creditor objects to the confirmation of the Plan on the basis that the Plan calls for adjusting the interest rate on its loan with Debtor to 1.9%. Creditor’s claim is secured by a 2015 Lexus RX350. Creditor argues that this interest rate is outside the limits authorized by the Supreme Court in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). In *Till*, a plurality of the Court supported the “formula approach” for fixing post-petition interest rates. *Id.* Courts in this district have interpreted *Till* to require the use of the formula

approach. See *In re Cachu*, 321 B.R. 716 (Bankr. E.D. Cal. 2005); see also *Bank of Montreal v. Official Comm. of Unsecured Creditors (In re American Homepatient, Inc.)*, 420 F.3d 559, 566 (6th Cir. 2005) (*Till* treated as a decision of the Court). Even before *Till*, the Ninth Circuit had a preference for the formula approach. See *Cachu*, 321 B.R. at 719 (citing *In re Fowler*, 903 F.2d 694 (9th Cir. 1990)).

The court agrees with the court in *Cachu* that the correct valuation of the interest rate is the prime rate in effect at the commencement of this case plus a risk adjustment. The court fixes the interest rate as the prime rate in effect at the commencement of the case, 3.25%, plus a 1.25% risk adjustment, for a 4.5% interest rate. The objection to confirmation of the Plan on this basis is sustained. See 11 U.S.C. § 1325(a)(5)(B)(ii).

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 Toyota Motor Credit Corporation dba Lexus Financial Services (“Creditor”) holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

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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 25, 2020. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

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

Navy Federal Credit Union ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that Debtor's Plan improperly classifies a claim with pre-petition arrearage.

## **DISCUSSION**

Creditor's objections are well-taken.

Debtor's Plan provides for Creditor's claim as a Class 4 claim, which is reserved for secured claims that are not in default and paid directly by Debtor. Plan, Dckt. 2. Creditor's Proof of Claim filed on June 19, 2020 shows a pre-petition arrearage of \$6,698.66. Proof of Claim No. 16. Thus, Debtor has improperly classified this claim which should be classified as a Class 1 in order to account for the arrearage through the Plan.

In an objection filed by Toyota Motor Credit, the court was faced with Debtor attempting to set a 1.5% interest rate for that creditor's secured claim as part of Class 2 under the Plan. Such 1.5% interest rate

is clearly violative of Supreme Court and Ninth Circuit authority on reasonable interest rates under the Plan.

Here, Debtor appears to be trying to “slip one by the court” and put known inaccurate information in the Plan by placing Navy Federal Credit Union’s claim with a \$6,698.66 arrearage in Class 4. If Debtor in good faith believed that a basis existed for such treatment for this claim, then the Debtor would of in good faith provided for such in the Additional Provisions section of the Plan, not misstating that there were no arrearages on this claim by placing it in Class 4.

As the Supreme Court has made clear in *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 130 S. Ct. 1367, 1381 n.14, 176 L. Ed. 2d 158, 173 n.14 (2010), Federal Court is not a “no rules, wild west, see what can be slipped by the opposing party and the federal judge” court.

A review of the Attachment to Proof of Claim No. 16-1 shows that Creditor asserts that there are two months of pre-petition default.

The court also notes that on June 26, 2020 Creditor filed a Notice of Forbearance, stating that the monthly payments for May, June, and July 2020 have been given a CARES Act forbearance. June 26, 2020 Docket Entry. Though the end of July is coming, nothing further has been filed by Debtor to address the forbearance and the three prior month payments and the August payment that will be due August 1, 2020.

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 Navy Federal Credit Union (“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.



Local Rule 9014-1(f)(1) Motion—Hearing not required.

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

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

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 Dismiss is granted and the case is dismissed.**

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtors, Allan Barcena Balcita and Shelly Mae Balcita ("Debtor"), is delinquent \$3,003.68 which represents multiple months of Debtor's \$1,417.88 monthly payment.

#### DEBTOR'S REPLY

Debtor filed a Reply on June 15, 2020. Dckt. 32. Debtor's counsel estimates Debtor can cure the delinquency by July 15, 2020, without filing an amended plan.

#### DISCUSSION

In light of the COVID pandemic and Debtor's counsel representing Debtor can become current by July 15, 2020, the court continued the hearing on the Motion to July 21, 2020. This will allow Debtor to either become current or file an amended plan by the next hearing.

#### July 21, 2020 Hearing

At the hearing, xxxxxxxxxxxxxxxx.

~~Nothing further has been filed by the Debtor or the Chapter 13 Trustee.~~

~~The Debtor being in default on the Plan payments and not addressing them either through a cure or proposing a modified plan, cause exists to dismiss the 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 Motion to dismiss filed by 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.~~

**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.

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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 9, 2020. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

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

The debtor, Brent Brandolino ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for monthly payments of \$1,400.00 for 60 months, and a 25% dividend to creditors of unsecured claims totaling approximately \$214,715.18. Amended Plan, Dckt. 39. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

#### **CHAPTER 13 TRUSTEE'S OPPOSITION**

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on June 30, 2020. Dckt. 41. Trustee opposes confirmation of the Plan on the basis that:

- A. Inconsistent attorney fees are listed in the plan and Debtor's Rights & Responsibilities.
- B. An unsecured claim may prevent the plan from completing in 60 months.
- C. Debtor may not be entitled to Chapter 13 relief under 11 U.S.C. § 109(e).

## **DISCUSSION**

### **Inconsistent Attorney Fees**

According to the Amended Plan and the Disclosure of Compensation, attorney's fees will total \$6,000.00. Dckts. 39, 33. However, in Debtor's Rights and Responsibilities, initial fees charged total \$4,000.00. Dckt. 12.

On July 1<sup>st</sup>, 2020, Debtor filed an Amended Rights and Responsibilities, reflecting the now accurate attorney's fees of \$6,000.00. Dckt. 44. This addresses the Trustee's first grounds for objection.

### **Failure to Complete Plan Within Allotted Time**

Debtor may be in material default under the Plan because the Plan will complete in more than the permitted sixty months. Creditor W. Patrick Garcia filed Proof of Claim for \$911,000.00. Proof of Claim, No. 8. According to the Chapter 13 Trustee, the Plan will not complete in 60 months due to the increase in unsecured debts, which substantially alters the proposed plan payments. Debtor provides 25% dividend for unsecured claims. Creditor's 25% dividend would be approximately \$227,750.00. Taking this amount into account, the Plan would exceed the maximum sixty months allowed under 11 U.S.C. § 1322(d).

Debtor has filed an Objection to Claim No. 8-1. Dckt. 45. The hearing is set for August 25, 2020. *Id.*

### **Section for 109 Amount of Debt Compliance**

Trustee alleges that Debtor does not qualify for Chapter 13 treatment because the unsecured debt limit in 11 U.S.C. § 109(e) will be exceeded if Claim No. 8 is permitted. That section limits Chapter 13 eligibility to individuals with regular income who owe "on the date of the filing of the petition, non-contingent, liquidated, unsecured debts of less than \$419,725 and non-contingent, liquidated, secured debts of less than \$1,257,850." Debtor's Summary of Schedules indicates that Debtor was well within the limits of § 109(e) as of the petition date, but if Claim No. 8 is allowed, the unsecured limit will be exceeded. The hearing on Claim 8-1 is set for August 25, 2020.

The issue is not whether the claim is disputed and ultimately disallowed, but whether the claim was asserted against Debtor when this case was filed. While asserting an almost \$1,000,000 claim, Creditor only provides the most cryptic of descriptions (with no documentation attached):

Breach of contract and property damages (\$161,000); and personal injuries and loss of income (\$750,000)

Proof of Claim 8-1, Question 8.

On Schedule E/F Debtor lists a creditor named "Sinclair Wilson" as having a \$150,000 undisputed, liquidated general unsecured claim against the Debtor. The claim is identified as relating to "Lawsuit W. Patrick Garcia vs Brent Brandolino." Schedule E/F, ¶ 3.6; Dckt. 14. It appears that Debtor used the Creditor's law firm's name in identifying the Creditor. It also indicates that there is a pending lawsuit, which Creditor did not disclose in Proof of Claim No. 8-1. Neither Creditor nor Debtor provides

any information about the claim being asserted or damages claimed by Mr. Garcia.

Debtor has filed an Objection to Proof of Claim No. 8-1. Objection, Dckt. 45. In it Debtor states that Debtor disputes the claim and makes reference to there being a state court trial brief in which Creditor computes his claim to be \$181,447.00. The Objection is devoid of any statement of what the objection is based on and what is disputed. Rather, the Objection merely states, with any grounds or basis for objecting, "I Object So Thy Claim Be Denied."

Though not referenced as an exhibit, the court notes that Exhibit 2 filed in Support of the non-specific Objection to Claim is identified as "Plaintiffs [sic] second amended trial brief." Dckt. 48. Debtor is correct in stating that this pleading computes Creditor's claim to be \$181,447.00.

#### 5. Total of Plaintiff's Damages:

The total of the above three categories of loss is summarized as follows:

|                               |                               |
|-------------------------------|-------------------------------|
| Fix and Finish Scope of Work: | \$78,797.00                   |
| Repair Interior Damage:       | \$48,400.00                   |
| Loss of Use:                  | \$33,750.00                   |
| Prejudgment Interest          | <u>\$20,500.00</u> (Estimate) |
| Total:                        | \$181,447.00                  |

Exhibit 2, p. 9:15-21 of Exhibit; Dckt. 48.

A Declaration of the Debtor has been filed in support of the Objection. Dckt. 47. The Declaration does not authenticate Exhibit 2. The Declaration provides no personal knowledge testimony as to the basis for the Objection. Rather, Debtor dictates his personal findings of fact and conclusions of law to the court:

2. I object to the allowance of this claim and assert that the classification of this claim should be Unsecured and that the claim should be allowed in the amount of \$0.00 as I believe that the entire suit against me is meritless and has sufficient defenses.

The paragraph numbering in the Declaration jumps from paragraph 2 to paragraph 9, as if these paragraphs were being copied and pasted from other non-bankruptcy pleadings and not written for this Declaration.

9. I further assert that the claim and the attachments, if any, appended to the claim do not sufficiently authenticate and substantiate the asserted balance and class of the underlying debt. Specifically, I object to the claim because the claim is not substantiated with enough particularity; as required by F.R.B.P. 3001(c). Particularly, the claim gives no grounds for the amounts claimed.

This could be a proper grounds for objecting if stated in the Objection, for which the court could make proper findings and conclusions. Also, the Declaration makes it clear that Debtor has not looked at Proof of

Claim 8-1, stating above that if there are any attachments to Proof of Claim 8-1, then for any such attachments that Debtor has not seen and does not know if they exist, Debtor concludes that they have not been authenticated (just as Debtor failed to authenticate his exhibits) and that the possibly attached exhibits do not substantiate the claim.

The hearing on the Objection to Claim is set for August 25, 2020 and no responsive pleadings have been filed as of the court's preparation for the July 21, 2020 hearing on this Objection.

10. Further the claim is for an unliquidated and disputed amount. The claim also would allow for supposed further interest on the judgement that has not yet been entered and for potential legal costs that have not yet been incurred.

It appears that Debtor testifies to his legal conclusions concerning unliquidated debts and the application of California law to such asserted obligations.

On the Reply, Debtor requests the court continue the hearing on confirmation until after the August 25<sup>th</sup> hearing. Dckt. 50.

Upon review of the Motion, Opposition, and Reply, and then the Objection which does not state a basis for disallowing the claim, and further consideration of Debtor providing his personal findings and conclusion (and little, if any, personal knowledge testimony), there is no basis to continue the hearing.

Therefore, the court concludes that the Plan as now presented does not comply with 11 U.S.C. § 1322 and § 1325, the Motion is denied without prejudice, and the Plan is not confirmed.

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Brent Brandolino ("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.

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

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

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

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 Dismiss is granted, and the case is dismissed.**

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtors, Peter Andrew Maxwell and Natalie Christine Maxwell ("Debtor"), are delinquent \$9,000 with monthly plan payments of \$4,500.

## DEBTOR'S RESPONSE

Debtor filed a Response on June 25, 2020. Dckt. 40. Debtor states the delinquency occurred due to unforeseen circumstances from the COVID-19 pandemic. Declaration, Dckt. 41. Debtor requests for a continuance to July 3 to allow time to cure the delinquency.

## DISCUSSION

In light of Debtor's request and the circumstances surrounding Debtor's delinquency, the court continued the hearing on this Motion to July 21, 2020 at 2:00p.m.

While Debtor requested a continuance to become current in payments, the longer continuance will also allow Debtor to file and set for confirmation hearing a modified plan in the event the delinquency cannot be cured.

Unfortunately, nothing further has been filed by the Debtor demonstrating that Debtor is, and is

capable of, prosecuting this case.

Debtor having elected to not address these issues or provide any further pleadings from which the court could determine that Debtor can cure the default or otherwise prosecute this case, 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 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 this bankruptcy case is dismissed.



**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).**

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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 July 1, 2020. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

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| <p><b>The Objection to Confirmation of Plan is sustained.</b></p> |
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The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan. Trustee filed the original Objection on July 1<sup>st</sup>, 2020. Dckt. 48. On July 16, 2020, Trustee filed a Supplemental objection, opposing confirmation of the Plan on the basis that:

- A. Debtor appeared at the continued Meeting of Creditors but failed to provide proof of social security.
- B. Debtor's Plan may improperly modify a secured claim.
- C. Debtor failed to file federal tax returns.

## DISCUSSION

Trustee's objections are well-taken.

## **Failure to Provide Social Security Number**

Every individual debtor shall bring to the meeting of creditors under 11 U.S.C. § 341 evidence of social security number(s), or a written statement that such documentation does not exist. FED. R. BANK. P. 4002(b)(1)(B). Without the required documents, the Trustee is unable to properly examine the Debtor at the meeting of creditors.

## **Non-Standard Provisions**

Debtor's Plan includes multiple nonstandard provisions with unusual language incorporated. Debtor has used "litigation" throughout the provisions, and allows only for termination of the automatic stay if "the court determines litigation disposition concluded against the debtor." Plan, Dckt. 24. Trustee is uncertain whether the provided payments in the amount of \$2,700.00 to the USRE Trust are adequate protection pursuant to 11 U.S.C. § 1322(c)(2) where the proposed payments do not pay the claim in full.

This nonstandard provision included by the Debtor in the Chapter 13 Plan states that Debtor intends to sue Creditor USRE Trust for violation of the Dodd Frank Consumer Protection Act, but in the meantime will make an "adequate protection payment" of \$2,700, notwithstanding there being a \$48,369.56 pre-petition arrearage and the regular monthly installment being \$4,205. Making a monthly payment "adequate protection payment" which is only 64% of the actual installment (thus giving the Debtor a 36% discounted payment) is not adequate protection.

If Debtor believes that Debtor does not need to provide for this claim in good faith under the Bankruptcy Code, Debtor may commence litigation in the Superior Court or District Court (assuming federal cause of action actually asserted) and seek a preliminary injunction that will not require Debtor to make any monthly payment (but will require posting a bond as determined by the Superior or District Court judge).

## **Failure to File Tax Returns**

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

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

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

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

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick ("Trustee"), 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.

8.

[20-21558-E-13](#)  
[MWB-1](#)

DANIEL CRAIN  
Mark W. Briden

MOTION TO CONFIRM PLAN  
5-26-20 [\[37\]](#)

**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.

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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 27, 2020. 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 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).

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| <p><b>The Motion to Confirm the Amended Plan is denied.</b></p> |
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The debtor, Daniel Crain ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for monthly payments of \$1,500.00 for 60 months, and a 4% dividend to creditors with unsecured claims totaling approximately \$209,007.00. Amended Plan, Dckt. 39. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

#### CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on July 7, 2020. Dckt. 58. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor's Plan exceeds 60 months.
- B. Debtor will not be able to afford plan payments.

## **DISCUSSION**

### **Plan Term is Greater Than 60 months**

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to Trustee, the Plan will complete in 72 months due to the interest that must be paid on secured claims, according to the plan.

The Trustee provides his computation of the plan payments totaling \$90,000 (\$1,500 a month for 60 months). After deducting \$9,000 for Trustee Fees, \$2,000 for Debtor's counsel's fees, and \$2,336.39 of priority claims, that leaves \$76,663.61.

However, that remaining amount must pay \$74,414.68 in secured claims which are to be paid with 4.5% interest. The Plan (Dckt. 39) also lists \$209,007 in general unsecured claims, for which there is to be a 4% dividend, which equals an additional \$8,360.

The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

### **Failure to Afford Plan Payment**

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). First, Debtor's Schedule I shows no income tax expense, and inconsistent business income. Further, Debtor's income from his business has fluctuated significantly for the last few years, and the Plan proposed assumes a monthly income increase from his current income. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Debtor filed a Response on July 14, 2020 and proposes to increase the Plan payment to \$1,785.18 to allow for the Plan to complete in 60 months. Dckt. 64. Moreover, Debtor filed Exhibits 1 and 2 in support of the Response arguing that the Profit/Loss reports support the projected income amounts in the business documents filed with Schedule I. Declaration, Dckt. 65. Debtor filed an Amended Schedule J which he asserts shows that he is able to make the plan payments. *Id.*

### **Decision**

Debtor provides testimony that he can increase his monthly plan payment to \$1,785.18 (an increase of \$285.18) to make the plan fund properly. Debtor provides two snap shot months of income and expenses, showing confusing information, providing overlapping Profit and Loss Statements for his business for the period May 24 through June 24, 2020, and then for June 1 through June 24, 2020. It appears that the Debtor is attempting to "double count" the same income.

Amended (not Supplemental) Schedules I and J have been filed. Dckt. 63. On Schedule I Debtor states he has only \$9,109 (the court says only in light of the income shown on the overlapping May 24 - June 24 and then June 1 - June 24 exhibits filed by Debtor) of pre-income and self-employment tax income from his construction business. Dckt. 63 at 4-5.

On Amended Schedule J Debtor lists \$7,319.00 in expenses, leaving Debtor \$1,790.00 a month to fund a plan. *Id.* at 7-8. The Debtor's expenses include \$1,500 a month for quarterly 1040s on his \$108,000 in net income. That is \$500 a month federal and state income taxes for \$9,000 a month income,

and does not include self-employment taxes.

While the increase in the Plan payment is modest, the financial information provided by Debtor does not support confirmation. While the Debtor does not have any tax claims filed, the \$500 a month stated for payment of federal and state income taxes and self-employment taxes does not appear reasonable.

At the hearing, **XXXXXXXXXX**

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

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Daniel Crain (“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.

~~IT IS ORDERED~~ that the Motion is granted, and Debtor’s Amended Chapter 13 Plan filed on May 26, 2020, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

**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).**

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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, parties requesting special notice, and Office of the United States Trustee on July 6, 2020. By the court's calculation, 15 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, -----  
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| <p><b>The Motion to Extend the Automatic Stay is granted.</b></p> |
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Sonda Charlton ("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. 19-24119) was dismissed on June 2, 2020, after Debtor failed to become current on plan payments by March 10, 2020. *See* Order, Bankr. E.D. Cal. No. 19-24119, Dckt. 104, June 2, 2020. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because timely payments were not made after Debtor's grandson lost his job. Declaration, Dckt. 14. Debtor is now filing in hopes of keeping her residence. *Id.* Additionally, Debtor has not acquired any new debt. *Id.*

Debtor's grandson filed a Declaration on July 6, 2020, stating that he is temporarily unemployed as a teacher due to COVID-19 and currently receives \$4,000.00 a month from unemployment. Declaration, Dckt. 15. He can afford and is willing to assist Debtor in making her payments by contributing \$1,000.00 a

month. *Id.*

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

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

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

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

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

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

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

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

The Motion to Extend the Automatic Stay filed by Sonda Charlton (“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.

**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).**

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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 July 7, 2020. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

**The Objection to Confirmation of Plan is ~~overruled~~.**

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

- A. Debtor has an unexplained health issue.
- B. Debtor's family assistance is unclear.

## DISCUSSION

Trustee's objections are well-taken.

### Debtor's Health Issue

Debtor appeared at the Meeting of Creditors held June 11, 2020. Debtor took the Debtor's oath, but had difficulties communicating otherwise. Debtor's attorney informed Trustee that Debtor has a



condition which impacts his ability to communicate, but he has full comprehension. Trustee objects on the basis that evidence should be provided to explain the “scope and extent” of the health issue, and to explain how it will affect the performance of the Plan. Dckt. 54.

### **Family Assistance/Rental Evidence**

Debtor is self-employed as a Rental Manager. He receives assistance in operating this business from his father, but the extent of the father’s involvement is unclear. No declarations have been filed.

Debtor filed a Declaration on July 13, 2020, responding to Trustee’s objection declaring that he has a movement disorder which affects his motor functions such that he is unable to drive, and thus depends on his father and ride share companies to “get around.” Declaration, Dckt. 67. Moreover, Debtor testifies that he has renters on two of his properties who are reliable and pay on time, and is planning to sell the third property (8295 Florintown Way, Sacramento, CA) as stated in the proposed Plan. *Id.* See Dckt. 3. The court entered an order authorizing the employment of a Real Estate Broker on May 24, 2020. Dckt. 33.

At the hearing, **XXXXXXXXXX**

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 the Chapter 13 Trustee, David Cusick (“Trustee”), 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 is overruled, and Pete Garcia’s (“Debtor”) Chapter 13 Plan filed on April 6, 2020, is confirmed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

**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).**

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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, and Office of the United States Trustee on July 7, 2020. 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, -----

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| <b>The Motion to Incur Debt is denied.</b> |
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David and Dorothy Jones ("Debtors") seek permission to purchase a used 2019 Mitsubishi Outlander, with a total purchase price of \$25,984.62 and monthly payments of \$555.02 to Team Ford over 6 years with a 20.89% fixed interest rate.

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).

### **Reasonableness**

Debtors do not address the reasonableness of incurring debt to purchase a used 2019 vehicle while seeking the extraordinary relief under Chapter 13 to discharge debts. Debtors have been renting a

2014 Chevrolet Cruze for a year now, which is a 4-door sedan. Though asserting that rental rates are exorbitant, Debtors provide no rationale as to why a 2019 Mitsubishi Outlander, which is a fairly large SUV, is the only suitable replacement for their rental car. Though the court acknowledges that the rental arrangement costs approximately double the proposed monthly purchase payments, and that Debtors diligently searched for lower interest rates, the proposed vehicle is not necessarily the best alternative. Debtors state no reason that an SUV is necessary or reasonable, as they have listed no dependents in their Schedule J. Schedule J, Dckt. 1.

### **Best Interest of Debtor**

Here, the transaction is not in the best interest of Debtor. The loan calls for a substantial interest charge—20.89%. Moreover, it is unclear to the court how in good faith Debtor could propose to purchase a car at this interest rate when paying holders of unsecured claims nothing. 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 car and attempt to borrow money at a 20.89% interest rate.

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 Incur Debt filed by David and Dorothy Jones (“Debtors”) 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 David and Dorothy Jones are not authorized to incur debt pursuant to the terms of the agreement, Exhibit A, Dckt. 52.

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

**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).**

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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, creditors, parties requesting special notice, and Office of the United States Trustee on July 6, 2020. By the court's calculation, 15 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.**

**The Motion to Sell Property is granted.**

Rebecca L. Wheeler ("Chapter 13 Debtor") seeks to employ Israel Bewley ("Realtor") pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Chapter 13 Debtor seeks the employment of Realtor to sell her primary residence so that she may pay all of her creditors and complete her Chapter 13 Plan.

Chapter 13 Debtor argues that Broker's appointment and retention is necessary to market and sell the Property for the benefit of the Debtor and her creditors. Realtor has been employed to market and sell the Property and represent Debtor in negotiating a sale.

Israel Bewley, an Associate Sales Agent of Century 21 MM (the "Broker"), testifies that he is

licensed real estate sales agent, who has extensive knowledge and familiarity with the area where the Debtor's residence is located. Israel Bewley testifies he and the company do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

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

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

Taking into account all of the relevant factors in connection with the employment and compensation of Broker, considering the declaration demonstrating that Broker does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Israel Bewley, of Century 21 MM, as the Realtor for the Chapter 13 Estate on the terms and conditions set forth in the Residential Listing Agreement filed as Exhibit A, Dckt. 20. 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.

## **SALE OF PROPERTY**

The Bankruptcy Code permits Rebecca L. Wheeler, Chapter 13 Debtor, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the real property commonly known as 751 Colemanite Circle, Vacaville, California ("Property").

The proposed purchaser of the Property is John J. Ling and Alisa M. Lind, and the terms of the sale are:

- A. Sale price is \$475,000, and is a cash transaction.
- B. All costs of sale, such as escrow fees, title insurance, and broker's commissions, will be paid in full from the sale proceeds.
- C. Seller to pay for the natural hazard zone disclosure report, smoke alarm and carbon monoxide device installation, any mandatory government inspections, and upgraded one-year home warranty plan.

Trustee does not oppose the sale where it provides for sufficient proceeds to pay claim 100%.  
Dckt. 22.

## 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: ~~XXXXXXXXXXXXXXXXXX~~.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because the proceeds will allow Debtor to pay all of her creditors and complete her Chapter 13 Plan.

Debtor requests that the court authorize her to receive \$250,000.00 directly from escrow to secure alternate housing. The balance of approximately \$202,257.32 will be paid directly to the Chapter 13 Trustee.

Movant has estimated that a 4.5 percent broker's commission from the sale of the Property will equal approximately \$21,375.00. The commission will be split evenly between Seller's Realtor and his company receiving 2.25% (approx. \$10,687.50) and Buyer's broker receiving 2.25% (approx. \$10,687.50). As part of the sale in the best interest of the Estate, the court permits Chapter 13 Debtor to pay broker an amount not more than 4.5 percent commission.

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 Rebecca L. Wheeler ("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 Chapter 13 Debtor is authorized to employ Israel Bewley as Realtor for Chapter 13 Debtor on the terms and conditions as set forth in the Residential Purchase Agreement filed as Exhibit A, Dckt. 20.

**IT IS FURTHER ORDERED** that Rebecca L. Wheeler, Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to John J. Lind and Alisa M. Lind, or nominee ("Buyer"), the Property commonly known as 751 Colemanite Circle, Vacaville, California ("Property"), on the following terms:

- A. The Property shall be sold to Buyer for \$475,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit B, Dckt. 20, and as further provided in this Order.
- B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, 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.
- D. Chapter 13 Debtor is authorized to pay a real estate broker's commission in an amount not more than 4.5 percent of the actual purchase price upon consummation of the sale. A 2.25% commission shall be paid to Chapter 13 Debtor's broker, Israel Bewley / Century 21 MM and a 2.25% shall be paid to Buyer's broker Kasama Lee / RE/MAX Gold.
- E. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Chapter 13 Debtor except as provided in this Order below. Within fourteen days of the close of escrow, the Chapter 13 Debtor shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow.
- F. The Trustee shall place in escrow a demand for payment of all monies necessary to complete the 100% distribution through the Chapter 13 Plan. Upon disbursement of the monies to the Chapter 13 Trustee, the remaining monies in escrow may be disbursed directly to Rebecca L. Wheeler, the Chapter 13 Debtor.

**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).**

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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's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 15, 2020. By the court's calculation, 6 days' notice was provided.

The Court granted Debtor's Motion to Shortening Time on July 16, 2020. Dckt. 22.

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 -----

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**The Motion to Extend the Automatic Stay is granted.**

John Henry Monroe ("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. 17-25736) was dismissed on November 27, 2019, after Debtor failed to make plan payments. *See* Order, Bankr. E.D. Cal. No. 17-25736, Dckt. 117, November 27, 2019. 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 during the course of Debtor's prior bankruptcy his retirement income fluctuated due to some issues with the system. Declaration, Dckt. 16. Debtor ended up falling behind on his plan payments at various times. *Id.* Additionally, he miscalculated his monthly expenses and he was simply spread too thin. *Id.* Debtor argues these issues are now resolved. *Id.* Debtor also asserts that Debtor's tax status has now changed due to the disability rating, which has given him a larger net. *Id.* Debtor feels confident he will be able to make the proposed plan payments. *Id.*



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

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

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

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

Debtor has sufficiently demonstrated the case was filed in good faith 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 John Henry Monroe (“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.

**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).**

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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, parties requesting special notice, and Office of the United States Trustee on July 14, 2020. By the court's calculation, 7 days' notice was provided.

The Court granted Debtor's Motion to Shortening Time on July 16, 2020. Dckt. 22.

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 -----

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**The Motion to Extend the Automatic Stay is granted.**

Kenneth Lee Smithour ("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. 19-27562) was dismissed on July 6, 2020, after Debtor failed to make plan payments or confirm a plan in the case. *See* Order, Bankr. E.D. Cal. No. 19-27562, Dckt. 59, July 6, 2020. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because of Debtor and Debtor's spouse loss of regular and overtime income as registered nurses at their respective hospitals due to COVID-19. Declaration, Dckt. 12. Moreover, due to non-COVID-19 health related reasons, Debtor's spouse has been on disability since April 2020, and is not yet back to work. *Id.* Debtor explains that although COVID-19 is still significant factor in Debtor's job, his employer has now stabilized its operations and response to the pandemic. *Id.* The financial situation has finally stabilized as regular surgeries are being scheduled as the hospital has learned more

about treating COVID-19 cases. *Id.* Debtor also expects his spouse to go back to work and receive income of at least as much as she is receiving in disability payments. *Id.*

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

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

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

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

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

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

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

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

The Motion to Extend the Automatic Stay filed by Kenneth Lee Smithour (“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.

15. [16-20565](#)-E-13      WALDINA NUNEZ  
WW-[3](#)                      Mark A. Wolff

**MOTION FOR AUTHORIZATION TO  
ENTER INTO REAL ESTATE  
TRANSACTION  
6-22-20 [\[52\]](#)**

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

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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 June 22, 2020. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

The Motion for Authorization to Enter Into Real Estate Transaction 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.

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| <p><b>The Motion for Authorization to Enter Into Real Estate Transaction is granted.</b></p> |
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Waldina Nunez, Chapter 13 Debtor, (“Movant”) requests that the court authorize her to enter into a real estate transaction with Dennis A. Rosseau (“Ex-Spouse”) in where she obtains Ex-Spouse’s interest in real property commonly known as 1140 Lauchert Place, Galt, California (“Property”). The interest in the Property was awarded to Movant through dissolution proceedings that occurred prior to the filing of this bankruptcy case.

At the time of the award, Ex-Spouse remained on the title to the Property because Debtor could not afford to refinance the loan on the Property. Declaration, Dckt. 55. Movant and Ex-Spouse are now ready and able to transfer the interest for the Property to be under her name only. *Id.* Movant has filed the Master Statement for this transfer as Exhibit A in support of the Motion. Dckt. 54.

Movant represents the following as it pertains to this interest transfer:

- A. Movant is not paying Ex-Spouse for the transfer of the Property, but she is paying the costs associated with the escrow and transfer of the Property, including title insurance.
- B. Movant is not obtaining a new loan in connection with the transfer.
- C. The proposed transaction is a transfer to Movant of Ex-Spouse's interest in the Property.

Trustee is not opposed to this transactions and notes that Debtor is current in plan payments.  
Dckt. 57.

## **DISCUSSION**

As explained in the Motion, relief is sought to insure that the documentation of transferring title to the Debtor is proper. This will consummate the order of the State Court in the Debtor's marital dissolution proceeding. No new financing is being obtained and nothing is being paid or any obligation to be paid by the Debtor is part of the transfer.

The Motion is granted.

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

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

The Motion for Authorization to Enter Into Real Estate Transaction filed by Waldina Nunez, 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 for Authorization to Enter Into Real Estate Transaction between Movant and Dennis A. Rosseau ("Ex-Spouse") is granted, and Movant is authorized to enter into the transfer of title to the real property commonly known as 1140 Lauchert Place, Galt, California into the Debtor as the sole and single owner, with her ex-husband Dennis Rosseau transferring his interests of record to Debtor. The costs and expenses of the transfer are on the terms and listed in the Master Statement filed as Exhibit A in support of the Motion (Dckt. 54).

## FINAL RULINGS

16. [20-22405](#)-E-13      JAIME/PATRICK GORDON      MOTION TO VALUE COLLATERAL OF  
MC-1      Muoi Chea      YOLO FEDERAL CREDIT UNION,  
6-22-20 [18]

**Final Ruling:** No appearance at the July 21, 2020 hearing is required.

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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 22, 2020. By the court's calculation, 29 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 Yolo Federal Credit Union ("Creditor") is granted, and Creditor's secured claim is determined to have a value of \$6,451.00.**

The Motion filed by Jaime Monette Gordon and Patrick Jack Gordon ("Debtor") to value the secured claim of Yolo Federal Credit Union ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 21. Debtor is the owner of a 2014 Ford Fusion ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$6,451.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

### DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred in June 2016, which is

more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$9,750.00. Declaration, Dckt. 21. 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 \$6,451.00, 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 Jaime Monette Gordon and Patrick Jack Gordon ("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 Yolo Federal Credit Union ("Creditor") secured by an asset described as 2014 Ford Fusion ("Vehicle") is determined to be a secured claim in the amount of \$6,451.00, 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 \$6,451.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

**Final Ruling:** No appearance at the July 21, 2020 hearing is required.

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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, and Office of the United States Trustee on June 16, 2020. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

**The Motion to Confirm the Amended Plan is granted.**

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Christina Mae Williams ("Debtor"), has provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response indicating non-opposition on June 22, 2020. Dckt. 23. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Christina Mae Williams ("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 June 16, 2020, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.



**Final Ruling:** No appearance at the July 21, 2020 hearing is required.

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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 June 15, 2020. By the court's calculation, 36 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.

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| <p><b>The Motion to Confirm the Amended Plan is granted.</b></p> |
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11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Tammy Potter-Goddard and Betty Potter-Goddard ("Debtors") have provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on June 30, 2020. Dckt. 154. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtors, Tammy Potter-Goddard and Betty Potter-Goddard ("Debtors") 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 Debtors' Amended

Chapter 13 Plan filed on June 3, 2020, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

19. [18-23612-E-13](#) **JARED/LINDSAY ILDEFONZO** **MOTION TO MODIFY PLAN**  
[EWV-260](#) **Eric W. Vandermeij** **6-15-20 [75]**

**Final Ruling:** No appearance at the July 21, 2020 hearing is required.

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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, and Office of the United States Trustee on June 15, 2020. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

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| <b>The Motion to Confirm the Modified Plan is granted.</b> |
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11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtors, Jared Ruben Bartholomew Ildefonzo and Lindsay Marinas Mangoba Ildefonzo ("Debtor"), have filed evidence in support of confirmation. No opposition to the Motion has been filed by the Chapter 13 Trustee, David Cusick ("Trustee"), or by creditors. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Jared Ruben Bartholomew Ildefonso and Lindsay Marinas Mangoba Ildefonso (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, and Debtor’s Modified Chapter 13 Plan filed on June 15, 2020, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

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| 20. | <a href="#"><u>17-27056-E-13</u></a><br><a href="#"><u>DPC-2</u></a> | <b>PATRICK BERNARD</b><br><b>Arasto Farsad</b> | <b>CONTINUED MOTION TO DISMISS</b><br><b>CASE</b><br><b>6-3-20 [100]</b> |
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**Final Ruling:** No appearance at the July 21, 2020 hearing is required.

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| <p><b>The Motion to Dismiss is dismissed without prejudice.</b></p> |
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David Cusick (“the Chapter 13 Trustee”) having filed a Notice of Dismissal, which the court construes to be an Ex Parte Motion to Dismiss the pending Motion on July 13, 2020, Dckt. 107; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion 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 Patrick Bernard (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss filed by David Cusick (“the Chapter 13 Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 107, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss is dismissed without prejudice.

**Final Ruling:** No appearance at the July 21, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 27, 2020. 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. The debtor, Michael Whitney ("Debtor") has provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on June 30, 2020. Dckt. 28. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Michael Whitney ("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 June 1, 2020, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

22. [20-22570](#)-E-13      DONALD/KATHLEEN LENIHAN      **OBJECTION TO CONFIRMATION OF**  
[EMM-1](#)      Michael O'Dowd Hays      **PLAN BY BOSCO CREDIT LLC**  
7-2-20 [\[41\]](#)

**DEBTOR DISMISSED: 07/07/20**

**JOINT DEBTOR DISMISSED:**

**07/07/20**

**Final Ruling:** No appearance at the July 21, 2020 hearing is required.  
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The case having previously been dismissed, the Objection is overruled as moot.

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

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

The Objection to Confirmation of 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 Objection is overruled as moot, the case having been dismissed.