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UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

August 11, 2020 at 2:00 p.m.

1. **19-26101-E-13** **JUDITH HART** **MOTION TO CONFIRM PLAN**
ADR-4 **Justin Kuney** **6-17-20 [64]**
1 thru 3

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 17, 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).

<p>The Motion to Confirm the Amended Plan is denied.</p>

The debtor, Judith Hart ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for monthly payments of \$1,510.00 for 60 months, and a 0% dividend to creditors holding unsecured claims. Amended Plan, Dckt. 68. 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 28, 2020. Dckt. 94. Trustee opposes confirmation of the Plan on the basis that:

- A. The Plan relies on pending motions to value collateral.
- B. Debtor failed to provide business documents.

DISCUSSION

Debtor's Reliance on Motion to Value Secured Claim

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of Bank of New York Mellon, and another claim of Portfolio Recovery Associates, LLC. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

Both of Debtor's Motions to Value Collateral were set for hearing on August 11, 2020, the same day as the instant Motion to Confirm. Both Motion to Value have been granted and determined to be in the amount of Debtor's valuation. Thus, an objection to confirmation of the Plan will not be sustained on this basis.

Failure to File Documents Related to Business

Debtor has failed to timely provide the Chapter 13 Trustee with business documents including:

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

11 U.S.C. §§ 521(e)(2)(A)(i), 704(a)(3), 1106(a)(3), 1302(b)(1), 1302(c); FED. R. BANKR. P. 4002(b)(2) & (3). Debtor is required to submit those documents and cooperate with the Chapter 13 Trustee. 11 U.S.C. § 521(a)(3). Without Debtor submitting all required documents, the court and the Chapter 13 Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325.

Debtor having failed to provide the required business documents, the Amended Plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

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

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

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

2. [19-26101](#)-E-13 **JUDITH HART** **MOTION TO VALUE COLLATERAL OF**
[ADR-2](#) **Justin Kuney** **THE BANK OF NEW YORK MELLON**
6-17-20 [\[56\]](#)

Final Ruling: No appearance at the August 11, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, Creditor, and Office of the United States Trustee on June 17, 2020. By the court’s calculation, 55 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 Bank of New York Mellon (“Creditor”) is granted, and Creditor’s secured claim is determined to have a value of \$14,751.84.

The Motion to Value filed by Judith Hart (“Debtor”) to value the secured claim of Bank of New York Mellon (“Creditor”) is accompanied by Debtor’s declaration. Declaration, Dckt. 58. Debtor is the owner of the subject real property commonly known as 1055 Thompson Way, Placerville, California (“Property”). Debtor seeks to value the Property at a fair market value of \$275,000.00 as of the petition filing date. As the owner, Debtor’s opinion of value is evidence of the asset’s value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Debtor identifies the Property as not being Debtor’s primary residence, but property that is rented to a person not related to Debtor.

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

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

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

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

TRUSTEE'S RESPONSE

The Chapter 13 Trustee has filed a Response indicating non-opposition to the Debtor's Motion. Dckt. 90.

DISCUSSION

The first deed of trust secures a claim with a balance of approximately \$259,751.84. Claim 5-1. Creditor's second deed of trust secures a claim with a balance of approximately \$43,995.40. Claim 1-1. Therefore, Creditor's claim secured by a junior deed of trust is partially under-collateralized. Creditor's secured claim is determined to be in the amount of \$14,751.84, the value of the collateral, and therefore payments in the secured amount of the claim shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion to Value Collateral and Secured Claim filed by Judith Hart ("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 Bank of New York Mellon (“Creditor”) secured by a second in priority deed of trust recorded against the real property commonly known as 1055 Thompson Way, Placerville, California, is determined to be a secured claim in the amount of \$14,751.84, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$275,000.00 and is encumbered by a senior lien securing a claim in the amount of \$259,751.84, which does not exceed the value of the Property that is subject to Creditor’s lien.

3. [19-26101-E-13](#) **JUDITH HART** **MOTION TO VALUE COLLATERAL OF**
[ADR-3](#) **Justin Kuney** **PORTFOLIO RECOVERY**
 ASSOCIATES, LLC,
 6-17-20 [60]

Final Ruling: No appearance at the August 11, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, Creditor, and Office of the United States Trustee on June 17, 2020. By the court’s calculation, 55 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 Portfolio Recovery Associates, LLC (“Creditor”) is granted, and Creditor’s secured claim is determined to have a value of \$10,450.00.

The Motion filed by Judith Hart (“Debtor”) to value the secured claim of Portfolio Recovery Associates, LLC (“Creditor”) is accompanied by Debtor’s declaration. Declaration, Dckt. 62. Debtor is the owner of a 2012 Nissan Frontier King Cab (“Vehicle”). Debtor seeks to value the Vehicle at a replacement value of \$10,450.00 as of the petition filing date. As the owner, Debtor’s opinion of value is evidence of the

asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on August 2, 2014, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$26,651.75. Proof of Claim, No. 2-1. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of \$10,450.00, 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 Judith Hart ("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 Portfolio Recovery Associates, LLC ("Creditor") secured by an asset described as 2012 Nissan Frontier King Cab ("Vehicle") is determined to be a secured claim in the amount of \$10,450.00, 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 \$10,450.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on July 28, 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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<p>The Motion to Incur Debt is granted.</p>
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Steve Ramirez-Fourkiller and Tina Fourkiller ("Debtor") seeks permission to purchase real property commonly known as 9411 Bowmont Way, Elk Grove, California, with a total purchase price of \$459,000.00 and monthly payments of \$2,516.00 to Summit Funding, Inc. over thirty (30) years with a 3.75% fixed interest rate. Debtors will make a down payment of \$60,000 through the Elem Indian Colony as a gift. Debtor will make a \$1,500.00 monthly payment toward the loan, and Debtor's parents will pay the balance of \$1,016.00 every month.

Trustee filed a Response through which Trustee explains that he does not oppose the Motion and notes that the court had previously approved a purchase in March 2020 but that it fell through (Dckt. 51). Dckt. 56.

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).

The court notes that Debtor has now completed three year of the five year plan in this case. This purchase, with family support, is consistent with Debtor's ongoing reorganization.

The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. There being no opposition from any party in interest and the terms being reasonable, the Motion is granted.

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

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

The Motion to Incur Debt filed by Steven Ramirez-Fourkiller and Tina Fourkiller ("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 Steve Ramirez-Fourkiller and Tina Fourkiller are authorized to incur debt pursuant to the terms of the agreement, Dckt. 53.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 17, 2020. By the court’s calculation, 55 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

<p>The Motion to Confirm the Modified Plan is denied.</p>
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The debtor, Lewis Brown (Amended Petition, Dckt. 31), “Debtor,” seeks confirmation of the Modified Plan because of a reduction in income relating to COVID-19. Declaration, Dckt. 189. The Modified Plan provides monthly payments of \$1,540.50 for 39 months, \$1,500.00 per month for June and July of 2020, and then \$2,250.00 for 24 months, and a 0% percent dividend to unsecured claims totaling \$99,475.00. Modified Plan, Dckt. 186. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on July 21, 2020. Dckt. 195. Trustee opposes confirmation of the Plan on the basis that the Plan does not complete within the 65 months proposed.

DISCUSSION

Failure to Complete Plan Within Allotted Time

Debtor is in material default under the Plan because the Plan will complete in the period provided in the Plan. According to the Chapter 13 Trustee, the Plan will complete in 81 months due to Trustee's fees and post-petition monthly payments not being included in the calculations. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

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

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

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

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

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

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

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

Below is the court's tentative ruling.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, Creditor, and Office of the United States Trustee on June 30, 2020. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

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

**The Motion to Value Collateral and Secured Claim of Westlake Services LLC
("Creditor") is XXXXXXXXXX**

The Motion filed by Andrew and Diane Garcia ("Debtor") to value the secured claim of Westlake Services LLC ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 16. Debtor is the owner of a 2007 Chrysler 300 ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$4,000.00 as of the petition filing date. As the owner, a 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).

In support of the Motion, Debtor provides her testimony under penalty of perjury as follows:

1. Debtor owns the Vehicle. Declaration ¶ 4; Dckt. 16.
2. Debtor's opinion that the extension of the automatic stay is in the best interest of the bankruptcy estate. (The issue of extending the automatic stay, which arises when a debtor files, and has dismissed, multiple bankruptcy cases within a one-year period.) *Id.*, ¶ 5.
3. Debtor then testifies as to why, in this case, Debtor should be able to perform a plan. *Id.*, ¶ 6.

No testimony is provided as to the value of the vehicle.

Interestingly, the court has compared this declaration with the one filed with the Motion to Extend the Automatic Stay in this Case (Dckt. 10). The second page of the Declaration filed in support of this Motion to Value is actually the signature page for the declaration in support of the Motion to Extend the Stay. It may be that in the rush to get the motions filed there was a error in matching up the signature to the Declaration for this Motion. Or, the Debtor may not have seen or read the first page of the present Declaration.

DISCUSSION

The court not having been provided with evidence of the value of the Vehicle, **XXXXXXXXXX**

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 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 pursuant to 11 U.S.C. § 506(a) is
XXXXXXXXXX

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, and creditors on June 19, 2020. By the court's calculation, 53 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy 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).

<p>The Motion to Confirm the Amended Plan is XXXXXXXXXX.</p>
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The debtor, Gavin Mehl ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for monthly payments of \$67.00 for 60 months, and a 25% dividend to unsecured claims totaling \$3,557.00. Amended Plan, Dckt. 46. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S RESPONSE

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on July 21, 2020. Dckt. 59. Trustee requests the court take into consideration that the Debtor failed to file a declaration in support of the Motion to Confirm, thus failing to provide evidence as required by 11 U.S.C. § 1325(a). *Id.* at p. 1. Trustee further notes that Debtor has filed Schedules under penalty of perjury but that as a Declaration is usually required for the confirmation of a Plan, the court may want to require it in this case where Debtor represents himself. *Id.* at p. 2.

Providing the court with evidence in support of requested relief is necessary. At the hearing,
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Review of Other Pleading Filed

On July 21, 2020, Debtor filed a pleading titled “CEASE AND DESIST DEMAND.” Dckt. 61. The pleading states that it is directed to a Civil Sergeant in Yolo County and the Yolo County Public Agency Risk Management Insurance Agency. In it, Debtor states that he has been the owner of specified property since 2005 and that such ownership is “secure” under patent protection “as previously taken by judicial notice of the Honorable Chief Judge Sargis in the case herein.” *Id.*, p. 1:26-27, 2:1-2. This Chief Judge is unaware of taking notice of or determining what interest Debtor may have in the property at issue. Debtor has asserted an interest, which was a topic of discussion in connection with this court issuing an order imposing the automatic stay with respect creditors in this case. Civil Minutes^{FN. 1} and Order, Dckts. 32, 33.

FN. 1. The court’s ruling on judicial notice concludes with:

The court denies Debtor’s request for the court to take judicial notice of the mostly illegible copies of documents by which he appears to be asserting that he owns real property. Fed. R. Evid. 901 et seq. The adjudicative fact of whether Debtor owns property is not a generally known fact in the District not subject to reasonable dispute.

Civil Minutes, p. 15; Dckt. 32.

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

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Gavin Mehl (“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
XXXXXXXXXX .

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, and Office of the United States Trustee on April 29, 2020. By the court's calculation, 41 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Allowance of Professional Fees is XXXXX.

Tracy L. Wood, the Attorney ("Applicant") for David Jerome Rynda, the Chapter 13 Debtor ("Client"), makes a Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period December 12, 2018 through April 29, 2020 Applicant requests fees and expenses in the total amount of \$30,537.25, with fees in the amount of \$25,916.00 plus \$4,000 for the Chapter 13 base fee, and costs in the amount of \$221.25.

APPLICABLE LAW

For Chapter 13 bankruptcy cases, Local Bankruptcy Rule 2016-1 provides, in pertinent part, the following for the allowance of reasonable attorney's fees for counsel representing a debtor. An attorney and client may elect for the attorney to be paid a flat ("no-look") fee of up to \$4,000.00 in nonbusiness cases and \$6,000.00 in cases in which the individual debtor has business obligations and assets. L.B.R. 2016-1(c). The approval of the no-look fee is made in the order confirming the Chapter 13 plan. *Id.* The attorney and client can opt-out of the no-look fee and have the attorney's fees and costs allowed as otherwise permitted under 11 U.S.C. §§ 300, 331. L.B.R. 2016(a).

If the attorney and client elect the no-look fee for the services relating to the Chapter 13 case, the attorney is allowed additional compensation beyond the scope of the no-look fees. *See*, L.B.R. 2016-1(c)(3).

The fee election is stated in the Rights and Responsibilities signed by the attorney and debtor

filed in the bankruptcy case. L.B.R. 2016-1(a).

The Rights and Responsibilities document filed by Debtor and Applicant in this case states with respect to fees:

Initial fees charged in this case are \$ 4,500.00, and of this amount, \$ 0.00 was paid by the Debtor before the filing of the petition. While this initial fee should be sufficient to fully and fairly compensate counsel for all pre-confirmation services and most post-confirmation services rendered in the case, where substantial and unanticipated post-confirmation work is necessary, the attorney may request that the court approve additional fees. If additional fees are approved, they shall be paid through the plan by the chapter 13 trustee unless otherwise ordered. The attorney may not receive fees directly from the Debtor.

Dckt. 14.

The scope of pre-petition, post-filing, confirmation, and post-confirmation services are the standard ones expected, and do not include adversary quite title litigation. However, they do include confirmation of a plan, entry of a discharge (if the debtor is eligible), and closing of the case. *Id.*

Statutory Basis For Allowance of Fees

Congress provides in 11 U.S.C. § 329 that the bankruptcy court shall determine whether fees charged by an attorney for a debtor are reasonable. For a Chapter 13 case, Local Bankruptcy Rule 2016-1 provides the vehicle for the court making that determination and sets some per se allowable amounts (which are always subject to a case by case review if appropriate).

Using the provisions of 11 U.S.C. § 330 in determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

(F) whether the compensation is reasonable based on the customary

compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

(i) unnecessary duplication of services; or

(ii) services that were not—

(I) reasonably likely to benefit the debtor's estate;

(II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). An attorney must “demonstrate only that the services were reasonably likely to benefit the estate at the time rendered,” not that the services resulted in actual, compensable, material benefits to the estate. *Ferrette & Slatter v. United States Tr. (In re Garcia)*, 335 B.R. 717, 724 (B.A.P. 9th Cir. 2005) (citing *Roberts, Sheridan & Kotel, P.C. v. Bergen Brunswick Drug Co. (In re Mednet)*, 251 B.R. 103, 108 (B.A.P. 9th Cir. 2000)). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

Reasonable Fees

A bankruptcy court determines whether requested fees are reasonable by examining the circumstances of the attorney’s services, the manner in which services were performed, and the results of the services, by asking:

- A. Were the services authorized?
- B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?
- C. Are the services documented adequately?
- D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?
- E. Did the attorney exercise reasonable billing judgment?

In re Garcia, 335 B.R. at 724 (citing *In re Mednet*, 251 B.R. at 108; *Leichty v. Neary (In re Strand)*, 375 F.3d 854, 860 (9th Cir. 2004)).

Reasonable Billing Judgment

Even if the court finds that the services billed by an attorney are “actual,” meaning that the fee application reflects time entries properly charged for services, the attorney must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors’ Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the services provided because the court’s authorization to employ an attorney to work in a bankruptcy case does not give that attorney “free reign to run up a [fees and expenses] tab without considering the maximum probable recovery,” as opposed to a possible recovery. *Id.*; see also *Brosio v.*

Deutsche Bank Nat'l Tr. Co. (In re Brosio), 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) (“Billing judgment is mandatory.”). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney is obligated to consider:

- (a) Is the burden of the probable cost of legal services disproportionately large in relation to the size of the estate and maximum probable recovery?
- (b) To what extent will the estate suffer if the services are not rendered?
- (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

In re Puget Sound Plywood, 924 F.2d at 958–59 (citing *In re Wildman*, 72 B.R. 700, 707 (N.D. Ill. 1987)).

A review of the application shows that Applicant’s services for the Estate include defense of a motion for relief from the automatic stay, preparing and filing several plans and motions to confirm plans, prosecuting an adversary proceeding, and general case administration. The court finds the services were beneficial to Client and the Estate and were reasonable.

Lodestar Analysis

If Applicant has opted out of the no-look fee or there are substantial and unanticipated legal services that have been provided, then such additional fees may be requested as provided in Local Bankruptcy Rule 2016-1(c)(3). The attorney may file a fee application, and the court will consider the fees to be awarded pursuant to 11 U.S.C. §§ 329, 330, and 331. For bankruptcy cases in the Ninth Circuit, “the primary method” to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves “multiplying the number of hours reasonably expended by a reasonable hourly rate.” *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). “This calculation provides an objective basis on which to make an initial estimate of the value of a lawyer’s services.” *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). A compensation award based on the lodestar is a presumptively reasonable fee. *In re Manoa Fin. Co.*, 853 F.2d 687, 691 (9th Cir. 1988).

In rare or exceptional instances, if the court determines that the lodestar figure is unreasonably low or high, it may adjust the figure upward or downward based on certain factors. *Miller v. Los Angeles Cty. Bd. of Educ.*, 827 F.2d 617, 620 n.4 (9th Cir. 1987). Therefore, the court has considerable discretion in determining the reasonableness of a professional’s fees. *Gates v. Duekmejian*, 987 F.2d 1392, 1398 (9th Cir. 1992). It is appropriate for the court to have this discretion “in view of the [court’s] superior understanding of the litigation and the desirability of avoiding frequent appellate review of what essentially are factual matters.” *Hensley*, 461 U.S. at 437. Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate. *See In re Placide*, 459 B.R. at 73 (citing *Unsecured Creditors’ Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

FEES AND COSTS & EXPENSES REQUESTED

Fees

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories.

Motion for Relief From the Automatic Stay: Applicant drafted correspondence, communicated with Debtor, reviewed the file, and prepared and filed the substitution of attorney, and drafted the opposition and appeared at the hearing for the Motion for Relief from the Automatic Stay filed by Elina Machado.

Proposed Plans and Motions to Confirm: Applicant prepared, filed, and served nine proposed plans for Debtor along with Motions to Confirm said plans.

Adversary Proceeding: Applicant prepared, filed, and served Debtor's complaint for Quiet Title, and defended against Defendant Elina Machado's Counter Claims. Applicant further prepared, filed, and served discovery.

Case Administration: Applicant prepared, filed Debtor's petition and schedules; prepared filed, and served the instant application for attorney's fees and costs, drafted correspondence, and met with client for administration of the case.

Applicant spent 64.79 hours performing the work in the categories described above.

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The persons providing the services, the time for which compensation is requested, and the hourly rates are:

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Tracy L. Wood	64.79	\$400.00	\$25,916.00
Total Fees for Period of Application			\$25,916.00

Costs and Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$221.25 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Parking and Mileage		\$221.25
		\$0.00
Total Costs Requested in Application		\$221.25

REVIEW OF TIME RECORDS AND SET FEES REQUESTED

In the Motion, Applicant requests \$4,000.00 as the “Chapter 13 base fee” and \$25,916.00 for post-petition litigation. Motion, p. 2:10.5-13; Dckt. 305. In saying \$4,000.00 for a “base fee,” the court interprets that language to mean “for all of the services required to qualify for a \$4,000.00 no-look fee.” As discussed above, those services include not only filing a case, but getting a plan confirmed, completed, and discharge entered. There is not a confirmed plan in the current case. It appears that the success of the post-petition litigation with Ms. Machado may obviate a need for a confirmed plan.

Based upon the scope of the actual and necessary work done, a fixed fee other than in the proportions provided in Local Bankruptcy Rule 2016-1(c)(4) may be appropriate. But that is based on the actual work required.

Exhibits B and C filed by Applicant are the billing records to support the \$25,916.00 for post-petition litigation services. Exhibit B is for the State Court Litigation. Dckt. 309. The State Court fees total \$2,757.00. \$1,600 of the fees are for the review of the State Court judge’s move out order and drafting the appeal brief.

Exhibit C is for the Adversary Proceeding litigation with Ms. Machado (Mr. Machado having defaulted by not responding). Dckt. 310. Both fees for legal services and expenses are mixed into one set of billings organized by date.

The hours billed and fees are not separately stated, the total hours billed not identified, and there is not a task billing analysis. The court finds helpful, and in most cases essential, for professionals to provide a basic task billing analysis for the services provided and fees charged. This has long been required by the Office of the U.S. Trustee, and is nothing new for professionals in this District. The task billing analysis requires only that the professional organize his or her task billing. The more simple the services provided, the easier is for Applicant to quickly state the tasks. The more complicated and difficult to discern the tasks from the raw billing records, the more evident it is for Applicant to create the task billing analysis to provide the court, creditors, and U.S. Trustee with fair and proper disclosure of the services provided and fees being requested by this Professional.

A review of the time records does not appear to indicate a large amount of time sunk into any one area. There are several motions for summary judgment, which the court notes were not granted.

Termination, Fee Dispute, and Pending Motion to Convert or Dismiss

With a settlement having been reached with Ms. Machado and it appearing to have preserved substantial interests of the bankruptcy estate (Settlement Agreement, Dckt. 187), it appears that the legal services of Applicant have been very beneficial to the bankruptcy estate and the Debtor, having achieved establishing his ownership of the property in dispute.

Unfortunately, it appears that the Debtor (individually and serving as the fiduciary Chapter 13 debtor) and Applicant have come to a parting of the ways. On May 15, 2020, in the Adversary Proceeding Applicant filed a Motion to Withdraw as counsel for the Debtor. This is not to withdraw just as counsel for the Debtor in the Adversary Proceeding, but in the bankruptcy case as well. 19-2023; Motion to Withdraw, Dckt. 218.

In the Motion, Applicant asserts that Debtor informed Applicant in a phone call on May 15, 2020, that Applicant was “fired” and that Debtor has filed a complaint with the State Bar. In his Declaration, Applicant states that the disagreement relates to the terms of the fee agreement for services rendered in this bankruptcy case. Dckt. 220. It is asserted that Debtor thinks that a pre-bankruptcy fee agreement for the State Court litigation governs the fees Applicant is entitled to with respect to the bankruptcy case. Applicant states that Debtor signed a subsequent bankruptcy fee agreement prior to Applicant undertaking the bankruptcy representation, and the agreement provides for services such as the adversary proceeding to be billed on an hourly basis. A copy of the bankruptcy fee agreement is not filed with the Motion to Withdraw.

There is also the continued hearing on the Motion to Convert or Dismiss this Chapter 13 case. Motion, Dckt. 283. As discussed in the Civil Minutes from prior hearings on the Motion to Dismiss, the Debtor is in substantial monetary default under the Chapter 13 plan he has proposed and has been unable to make the necessary plan payments. Civil Minutes, Dckt. 283. Debtor also has lost control of the Property, with several boarders he took in refusing to pay rent and then allowing other persons to occupy the Property. *Id.* Debtor has stumbled through multiple unlawful detainer proceedings, with the State Court judges refusing to issue order evicting them because Debtor never recorded a deed (which Debtor now says is lost) giving him title to the Property. Debtor failed to understand, even when pointed out to him by this court, that the federal court has exclusive jurisdiction over property of the estate, or what is asserted to be property of the estate, and the Bankruptcy Code and Rules provide express authority for ordering the turning over of possession of such property to a trustee or other fiduciary (such as a Chapter 13 debtor) of the bankruptcy estate.

Debtor has faced other challenges in this case and leading up to this case. On the eve of bankruptcy he recorded two deeds of trust which appear to be either for antecedent debts or debts which cannot be legally enforced against him. These were to Debtor’s brother for an obligation ten years earlier and a business associate. *Id.* Debtor has not acted on those potentially avoidable transfers. This may be based on a belief that if he performs the settlement with Ms. Machado and sells the Property, all creditors will be paid so as there not being a fraudulent conveyance or preference rights (and duties for the fiduciary of the bankruptcy estate) to be administered.

It appears that Debtor may not understand that Congress has made, as a matter of federal law, a determination of the fees that Applicant is entitled/allowed a federal law issue pursuant to 11 U.S.C. § 329. If Debtor has a dispute as to what are the terms of the agreement, that good faith dispute is to be promptly

and efficiently litigated in this court. While Debtor may file other complaints, that does not override 11 U.S.C. § 329.

With the settlement with Ms. Machado that documents the vesting of title in the Property in the bankruptcy estate for the Debtor appears to have obviated the need for a Chapter 13 plan - so long as the settlement is consummated.

August 11, 2020 Hearing

A review of the file indicates that nothing further has been filed by Debtor in prosecuting this case since April 2020, when this Motion was filed.

In the Adversary Proceeding, the court's order granting summary judgment was entered July 17, 2020.

At the hearing, **xxxxx**.

Tentative Ruling: No appearance at the August 11, 2020 hearing is required.

Local Rule 3007-1 Objection to Claim—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Chapter 13 Trustee, and Office of the United States Trustee on June 26, 2020. By the court's calculation, 46 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered.

The Default of Real Time Resolutions, Inc. is entered by the court, no timely opposition having been filed as required by Local Bankruptcy Rule 9014-1(f)(1).

The Objection to Proof of Claim Number 21-1 of Real Time Resolutions is sustained, and the claim is disallowed in its entirety.

Darrell and Chuenta Rhym, Chapter 13 Debtors ("Objector"), requests that the court disallow the claim of Real Time Resolutions, Inc. ("Creditor"), Proof of Claim No. 21-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$21,673.94.

Objector asserts that the claim does not conform with the Federal Rules of Bankruptcy Procedure, namely FRBP 3001, in that it fails to attach documentation essential to the determination of said claim. Moreover, Debtors contend that they do not ever remember incurring debt from this creditor. But believe that it might be related to a second deed of trust from their former residence which was foreclosed upon in 2008. Even if this is related to that second deed of trust back in 2008, Debtors argue that the debt would exceed the four-year statute of limitations under C.C.P. Section 337. Debtor requested documentation from the creditor, but they never received a response.

DISCUSSION

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial evidence to overcome the prima facie validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and requires financial information and factual arguments. *In re Austin*, 583 B.R. 480, 483 (B.A.P. 8th Cir. 2018). Notwithstanding the prima facie validity of a proof of claim, the ultimate burden of persuasion is always on the claimant. *In re Holm*, 931 F.2d at p. 623.

Once a party has objected to a proof of claim, the creditor asserting the claim may not withdraw the claim except on order of the court. FED. R. BANKR. P. 3006.

A review of Creditor's Proof of Claim 21-1 includes the following two attachments:

1. Exhibit A-1: Information Sheet including Debtors' names, case number and total debt owed: \$21,673.94.
2. Lost Note Affidavit: The form reads as follows:

LOST NOTE AFFIDAVIT

I, Shauna Boedeker, Attorney-in-Fact, am authorized to make this affidavit on behalf of the Seller and being duly sworn, do hereby state under oath that

The Seller is the payee under the following described promissory note ('the Note'):

Date:	10/26/2005
Loan:	
Borrower:	Chuenta Rhym and Darrell Rhym
Original Payee:	American General Financial Services, Inc.
Original Amount:	\$21,369.00

AMERICAN GENERAL SERVICES, INC. BY RESURGENT CAPITAL
SERVICES, LP ITS SERVICER OF RECORD, BY REAL TIME SOLUTIONS,
INC. ITS ATTORNEY IN FACT

[signed by Shauna Boedeker, as Attorney-in-Fact].

Proof of Claim 21-1, p. 5.

On the Proof of Claim docket page itself, under the "Remarks" column, Creditor states:
"Foreclosed out junior mortgage @ 4561 Cedarwood Way, Sacramenton [sic], CA 95823-3704. \

Decision

The Proof of Claim is very skinny with respect to information provided. It is disclosed that the lost note dates back to 2005 - fourteen years before the 2019 filing of this case. Debtor provides testimony that this obligation relates to a note secured by a junior deed of trust that was foreclosed on in 2008. If this note (which appears likely) is the one secured by the junior deed of trust, then the creditor lost its collateral in 2008 (being foreclosed out by the senior deed of trust) - eleven years before the filing of Debtor's bankruptcy case.

Creditor now seeks to enforce the unsecured obligation, eleven years after the foreclosure sale occurred in 2008. While the Objection has a detailed discussion of documentation, it does not present to the court whether there is a Statute that creates a Limitation on when a creditor can bring an action to enforce an obligation. Further, whether such Statute creating a Limitation also imposes a Bar on commencing any legal action (such as filing a proof of claim) or arbitration to enforce an obligation after the Limitation period provided in the Statute has expired.

Creditor has offered no response to the Objection.

The Objection is sustained and the claim is disallowed in its entirety.

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

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

The Objection to Claim of Real Time Resolutions, Inc. ("Creditor"), filed in this case by Darrell Rhym and Chuenta Rhym, Chapter 13 Debtors ("Objector"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Proof of Claim Number 21-1 of Creditor is sustained, and the claim is disallowed in its entirety.

Requests for prevailing party attorneys fees and costs by Objector shall be requested as provided in Federal Rule of Bankruptcy Procedure 7054.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 29, 2020. By the court's calculation, 43 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is XXXXX.

The debtors, Darrell Rhym and Chuenta Rhym ("Debtor") seek confirmation of the Modified Plan because the COVID-19 significantly impacted their regular income, but it has now returned to normal. Declaration, Dckt. 74. The Modified Plan provides monthly payments of \$1,666.00 for 60 months, and a 96% dividend to unsecured claims totaling \$65,376.53. Modified Plan, Dckt. 76. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on July 21, 2020. Dckt. 84. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor is delinquent in plan payments.
- B. The Plan relies on the Court granting the debtors' Objection to Proof of Claim.

DISCUSSION

Delinquency

The Chapter 13 Trustee asserts that Debtor is \$6,656.00 delinquent in plan payments, which represents multiple months of the \$1,666.00 plan payment. Before the hearing, another plan payment will be due. According to the Chapter 13 Trustee, the Plan in § 2.01 calls for payments to be received by the Chapter 13 Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Feasibility

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). The feasibility of the proposed Plan depends on the Court granting the debtor's Objection to Proof of Claim of Real Time Resolutions, Inc.

The Objection to Claim is to be heard the same day as this Motion. The court has sustained, and the claim was disallowed in its entirety.

~~————— The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.~~

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

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

~~————— The Motion to Confirm the Modified Chapter 13 Plan filed by the debtors, Darrell Rhym and Chuenta Rhym ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~————— **IT IS ORDERED** that Motion to Confirm the Modified Plan is granted, and the proposed Chapter 13 Plan is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on July 20, 2020. By the court's calculation, 22 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, -----

-----.

<p>The Motion to Incur Debt is granted.</p>
--

Eliezer Delmendo and Evangeline Delmendo ("Debtor") seeks permission to purchase real property commonly known as 1833 Oldenburg Drive, Fairfield, California, with a total purchase price of \$775,000.00 and monthly payments of \$4,046.16 to Old Republic Title Company and Loan Depot over 30 years with a 2.75% fixed interest rate.

Trustee does not oppose the motion but points out that Debtor is current under the confirmed plan, due to unsecured claims filed being lower than the amount projected, creditors with unsecured claims may receive up to 60% in distribution. Dckt. 137. Moreover, Trustee adds that Debtors previously owned a house with similar value and where Debtor's social security income has not been part of projected disposable income, Debtor seems to have been able to save enough to cover the total closing costs of \$15,192.06. *Id.*

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).

The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. There being no opposition from any party in interest and the terms being reasonable, the Motion is granted.

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

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

The Motion to Incur Debt filed by Eliezer Delmendo and Evangeline Delmendo (“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 Eliezer Delmendo and Evangeline Delmendo are authorized to incur debt pursuant to the terms of the agreement, Exhibit A, Dckt. 135.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 13 Trustee, and Office of the United States Trustee on June 26, 2020. By the court's calculation, 46 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>The Objection to Confirmation of Plan is overruled.</p>

Deutsche Bank National Trust Company ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that the Plan does not accurately account for creditor's pre-petition arrears.

DISCUSSION

Creditor's objection is based on the Plan providing to cure a pre-petition arrearage of only \$43,984.65, while Creditor has clearly stated in Proof of Claim No. 2-2 that the arrearage is \$66,649.80. Objection, p.1:23-24, 2:1-2. Creditor then argues, as its only basis for objection, that the plan therefore fails to require the cure of the arrearage Creditor asserts to exist.

Creditor's Objection is overruled. The proposed Chapter 13 Plan clearly provides with respect to the computation of the amount of the arrearage that:

3.02. The proof of claim, not this plan or the schedules, shall determine the amount and classification of a claim unless the court's disposition of a claim objection, valuation motion, or lien avoidance motion affects the amount or classification of the claim.

Chapter 13 Plan, ¶ 3.02; Dckt. 2.

Creditor's sole basis for Objection is contradicted by the plain language of the Plan

The Objection is overruled. ^{FN. 1.}

FN. 1. It may be that Creditor's actual objection is that the plan is not adequately funded to cure the arrearage. Creditor does not provide the court with such objection or any economic analysis upon which any such objection would be based. The court declines the opportunity to provide such legal services in stating and then supporting such as objection for creditor.

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

The Plan does comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is overruled.

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

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

The Objection to the Chapter 13 Plan filed by Deutsche Bank National Trust Company ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtors and Debtors' Attorney on July 22, 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>The Objection to Confirmation of Plan is sustained.</p>

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

- A. Debtors cannot afford the Plan payments.
- B. The Plan fails the Chapter 7 liquidation analysis.

DISCUSSION

Trustee's objections are well-taken.

Failure to Afford Plan Payment

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C.

§ 1325(a)(6). Schedule J indicates that Debtors' net monthly income is \$2,157.01. This amount provides insufficient funds for the proposed monthly payment of \$3,624.39 for 60 months. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Debtor Fails Liquidation Analysis

Debtor's plan fails the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). Trustee states that the value of property is disputed, and that the unsecured creditors would receive a higher distribution in a Chapter 7 proceeding. According to Trustee preliminary investigation, the non-exempt property in the estate totals \$5,744.58, and Debtors are currently proposing a 0% dividend to unsecured creditors.

Trustee also notes that the Debtors' first Plan payment of \$3,624.39 was due on July 25, 2020, prior to the hearing on the instant objection.

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.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on June 30, 2020. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

<p>The Motion to Confirm the Modified Plan is denied.</p>
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The debtor, Dewayne Williams ("Debtor") seeks confirmation of the Modified Plan due to the COVID-19 pandemic, and missed payments as a result of having his two adult children move back in with him. Declaration, Dckt. 155. The Modified Plan provides monthly plan payments of \$2,350.00 for 60 months, and a 0% dividend to unsecured claims totaling \$21,469.00. Modified Plan, Dckt. 156. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on July 21, 2020. Dckt. 160. Trustee opposes confirmation of the Plan on the basis that the Trustee is unsure Debtor can afford plan payments.

DISCUSSION

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). The Debtor is currently delinquent \$10,363.34. Additionally, the Debtor's most recent Schedule J reflects a net monthly income of \$2,354.00. However, the Debtor's declaration states that he has a net disposable income of \$2,734.00. Debtor has not filed supplemental Schedules I and J in support of the motion. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

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

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Dewayne 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 Motion to Confirm the Modified Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 17, 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).

<p>The Motion to Confirm the Amended Plan is denied.</p>

The debtor, Lisa Lynn Moore ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for monthly plan payments of \$710.00 for 60 months and a 28% dividend for unsecured claims totaling \$22,678.00. Amended Plan, Dckt. 104. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CREDITOR'S OPPOSITION

Federal Home Loan Mortgage Corporation, as Trustee for the benefit of the Freddie Mac Seasoned Loans Structured Transaction Trust, Series 2019-3 ("Creditor") holding a secured claim filed an Opposition on July 1, 2020. Dckt. 112. Creditor opposes confirmation of the Plan on the basis that:

- A. Debtor's Plan is not proposed in good faith because Debtor continues to file the same defective plan.
- B. Debtor's plan fails to provide for Creditor's full claim— \$6,874.73 in arrearage.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on July 21, 2020. Dckt. 118. Trustee opposes confirmation of the Plan on the basis that:

- A. The claim of Specialized Loan Servicing is \$6,874.73 in default, and thus should be a Class 1 and not a Class 4.

DISCUSSION

Creditor's and Trustee's concerns are well taken.

Failure to Cure Arrearage of Creditor

Creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts \$6,874.73 in pre-petition arrearage. The Plan does not propose to cure those arrearage, placing Creditor's claim as a Class 4 claim for which there is no arrearage.

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

As Creditor points out, this is Debtor's fourth amended plan including the same defective class term. Debtor's case was filed February 2019, and no plan has been confirmed. The last three being denied for failure to address Creditor's claim. (Dckts. 45, 64, and 96).

In her Declaration in support of the Plan, Debtor asserts that she was not behind in her mortgage at the time of filing her case and it is her understanding that her Counsel has attempted to address this issue with Creditor's counsel without success, and will be filing an objection to claim to be heard concurrently with the instant Motion. Dckt. 105.

Debtor's Declaration was filed on June 17, 2020. As of the preparation of this pre-hearing disposition, no objection to Creditor's claim has been filed.

Moreover, as Creditor correctly points out, the relevant Proof of Claim was filed on March 26, 2019. Debtor has known about this claim for over a year. Additionally, Creditor has been objecting on the same grounds to Debtor's proposed plans since January 27, 2020. *See* Opposition, Dckt. 94. Prior to Creditor opposing confirmation under these grounds, Chapter 13 Trustee had raised this ground since May 1, 2019. *See* Opposition, Dckt. 39. Debtor, again, has known for over a year that this was an issue that needed to be addressed and yet no explanation has been provided about the delay in filing an objection.

As previously stated in the Minutes for the prior proposed plan, the court is very much concerned that Debtor is not proposing plans in good faith. See 11 U.S.C. §1325(a)(3). As such, it cannot confirm the Plan.

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

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Lisa Lynn Moore (“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.

16. [18-25929-E-13](#) **JEFFREY YOUNG** **MOTION TO MODIFY PLAN**
[BLG-4](#) **Chad Johnson** **6-26-20 [91]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 26, 2020. By the court’s calculation, 46 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

The Motion to Confirm the Modified Plan is XXXXX.

The debtor, Jeffrey Young (“Debtor”) seeks confirmation of the Modified Plan on the basis that he has moved to Hawaii for a new job with a salary of \$66,002.00, his expenses have changed, and will continue to receive reduced VA benefits. Declaration, Dckt. 93. The Modified Plan provides \$1,469.00 to

be paid for months 21 through 60, and a 0.0 percent dividend to unsecured claims totaling \$37,111.33. Modified Plan, Dckt. 96. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on July 14, 2020. Dckt. 103. Trustee opposes confirmation of the Plan on the basis that:

A. Trustee is uncertain as to the Plan terms under the Nonstandard Provisions.

DISCUSSION

Debtor's Section 7- Nonstandard Provisions provide in part as follows:

As of Month 20 (June 2020)

Debtor has paid \$3,225.00 into the plan (Last payment receipt of \$1,000.00 on February 10, 2020).

...

Section 7.01: Section 2.01

Debtor will pay \$1,469.00 per month for months 21-60

Dckt. 96, at p. 7. Trustee notes that June 2020 is actually month 21 of the plan and believes that Debtor meant to state "\$3,225.00 total paid in as of Month 21 (June 2020) with payments of \$1,469.00 for months 22 (July 2020) – 60." Dckt. 103, at p. 2.

A the hearing, **XXXXXXXXXX**

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

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

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

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

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

~~**IT IS ORDERED** that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on June 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.~~

17. [19-24835-E-13](#) **YAMINAH HEAD**
[GEL-1](#) **Gabriel Liberman**

MOTION TO MODIFY PLAN
6-30-20 [25]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 30, 2020. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is XXXXX.

The debtor, Yaminah Aisha Head ("Debtor") seeks confirmation of the Modified Plan to catch up with her plan payments after her income was reduced due to the COVID-19 related shutdowns but due to the recent reopening her income has been restored and she will be able to make plan payments. Declaration, Dckt. 27. The Modified Plan provides \$5,925.00 to be paid from June 2020 through March 2025, and a 6.4 percent dividend to unsecured claims totaling \$45,590.46. Modified Plan, Dckt. 29. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on July 21, 2020. Dckt. 38. Trustee opposes confirmation of the Plan on the basis that:

- A. Section 7 states inaccurate months period.
- B. Debtor seeks to schedule post-petition arrears that Trustee may not pay without order or provision under the additional provisions.
- C. Debtor is changing Class 2 interest without explanation.

DISCUSSION

In the proposed Chapter 13 Plan, Section 7- Nonstandard Provisions, the Debtor provides in part as follows:

2.01 Monthly Plan Payments

Debtor proposes to pay \$5,925.00 per month for months 11 - 66 (June 2020 - March 2025). (Plan extended to 68 months pursuant to 11 USC §1329(d))

Dckt. 29 at p. 7. Trustee notes that the pay period “should be for months 11 – 68 as the debtor is proposing a 68-month plan. Dckt. 38, at p. 1.

Under Class 1 section of the proposed plan Debtor has scheduled a post-petition arrearage in the amount of \$7,425.86. Trustee notes that Trustee can not pay this scheduled claim without a specific order or provision in additional provisions.

Moreover, Debtor’s confirmed Plan provided for an interest in the amount of 5.5% for Class 2 claims. Under the instant proposed plan, Debtor has changed the Class 2 interest to 4.75% without explaining how this affects the interest previously paid on such claims.

At the hearing, **XXXXXXXXXX**

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

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

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

~~_____ The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Yaminah Aisha Head (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 26, 2020. By the court's calculation, 46 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is XXXXX.

The debtor, Meredith Ann Lawler ("Debtor") seeks confirmation of the Modified Plan to address three post-confirmation defaults on Debtor's monthly mortgage payments. Motion, ¶ 3; Dckt. 29. The plan is to be extended to 68 months, as permitted under the CARES Act amendments to the Bankruptcy Code, with there being only a \$2 a month increase in payments.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on July 14, 2020. Dckt. 36. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor seeks to schedule post-petition arrears not included in the additional provisions.

DISCUSSION

Under Class 1 section of the proposed plan Debtor has scheduled a post-petition arrearage in the amount of \$3,253.86. According to Trustee, the records show that two monthly post-petition payments are

in arrears for a total of \$2,169.24. Trustee is uncertain as to whether he can pay this claim separately from the ongoing mortgage payment at the rate of \$56.10 per month even if no separate claim is filed.

Trustee requests that language be included in the order confirming authorizing for Trustee to pay the ongoing arrears amount of \$2,169.24 as a separate claim at the rate of \$56.10 per month.

At the hearing, **XXXXXXXXXX**

The Modified Plan as amended 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, Meredith Ann Lawler ("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 26, 2020, and as amended with the following term:~~

~~Trustee shall pay the ongoing arrears amount of \$2,169.24 as a separate claim at the rate of \$56.10 per month~~

~~is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, as amended to expressly stated in the additional provisions the post-petition arrearage cure to be made through the 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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 23, 2020. By the court’s calculation, 49 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

<p>The Motion to Confirm the Plan is XXXXX.</p>

The debtor, Nur Bano (“Debtor”) seeks confirmation of the Chapter 13 Plan. The Plan provides for monthly payments of \$2,100 for 60 months and a 100% dividend to unsecured claims totaling \$0.00. Plan, Dckt. 19. 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 28, 2020. Dckt. 38. Trustee opposes confirmation of the Plan on the basis that:

- A. Plan exceeds the maximum months allowed.
- B. Debtor is delinquent in plan payments.

DISCUSSION

Failure to Complete Plan Within Allotted Time

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Chapter 13 Trustee, the Plan will complete in 66 months due to claims being filed for amounts higher than the Debtor scheduled. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

However, Trustee is not opposed to the Debtor making a plan payment of \$2,079.28 for July 25, 2020 and then increasing plan payments to \$2,150.00 starting August 25, 2020 for the remainder of the plan to enable plan to complete in 60 months in the order confirming plan.

Delinquency

The Chapter 13 Trustee asserts that Debtor is \$2,100.00 delinquent in plan payments, which represents one month of the \$2,100.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Debtor filed a Reply to Trustee noting that a cashier's check in the amount of \$2,1700.00 was send via certified mail to Trustee on August 6, 2020. Dckt. 43. A copy of the check was attached to the Reply as Exhibit A. *Id.* at p. 4. Debtor's Declaration filed in support of the Reply declares under penalty of perjury that she physically hand delivered the payment in the form a cashier's check in the amount of \$2,170.00 to the law offices of her Counsel on August 6, 2020. Dckt. 44. No authentication as to Exhibit A was provided.

At the hearing, **XXXXXXXXXX**

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 30, 2020. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is ~~XXXXX~~.

The debtor, Kenneth Roger Tabor ("Debtor") seeks confirmation of the Modified Plan on the basis that he has recently fallen behind plan payments due to the COVID-19 related closure of the DMV which has prevented him from transferring title for vehicles he buys and sells and has thus had to extend the payment period to 84 months in order to reduce his monthly payment. Declaration, Dckt. 194.

The Modified Plan provides for \$2,045.00 to be paid months 32 through 84, and a 100% percent dividend to unsecured claims totaling \$0.00. Modified Plan, Dckt. 196. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on July 21, 2020. Dckt. 200. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor seeks to schedule post-petition arrears without explaining these amounts.

DISCUSSION

Under Class 1 section of the proposed plan Debtor has scheduled a post-petition arrearage in the amount of \$6,500.00. Trustee notes that Debtor had previously scheduled post-petition arrearage of \$7,000 under the modified plan filed February 19, 2019, which have already been paid in full. Debtor does not specify if the currently proposed amount is an additional amount or any other details.

Trustee requests that the order confirming the proposed plan provide for such payment if this claim is to be paid as a claim separately from the ongoing mortgage payment at the rate of \$124.00 per month even if no separate claim is filed. Dckt. 200, at p. 2.

Debtor filed a response stating that Counsel has spoken with Trustee's office and agrees that Trustee's concern may be resolved in the order confirming the plan as per Trustee's request above. Dckts. 203, 204.

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, Kenneth Roger Tabor ("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 30, 2020, and amended as follows:

the Class 1 U.S. Bank/1st DOT for post-petition arrears is to be paid as a claim separately from the ongoing mortgage payment at the rate of \$124.00 per month even if no separate claim is filed

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.

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’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and on June 30, 2020. By the court’s calculation, 42 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

The Motion to Confirm the Modified Plan is XXXXX.

The debtor, Rhonda DeJesus (“Debtor”) seeks confirmation of the Modified Plan to bring her plan current after losing her job due to health and COVID-19 but now has found new employment and after an accident that led to the loss of her vehicle she will use the insurance proceeds to make plan payments and pay other expenses. Declaration, Dckt. 56. The Modified Plan provides 24 monthly payments at \$2,226.21, followed by 36 monthly payments at \$2,206.18, and a 0.0 percent dividend to unsecured claims totaling \$22,760.39. Modified Plan, Dckt. 59. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on July 21, 2020. Dckt. 68. Trustee opposes confirmation of the Plan on the basis that:

- A. Historic plan payments called for by the plan do not match the payments actually made.

- B. Class 4 Insured creditor should be paid in full by Trustee with available proceeds.

DISCUSSION

Debtor's proposed plan indicates that 24 payments at \$2,226.21 with a total of \$53,429.04 had been made. However, Trustee points out that Trustee has received \$56,437.75 consisting of debtor payments of \$48,834.00 and insurance proceeds of \$7,603.75 as of June 30, 2020. Trustee requests that this be addressed in the order confirming the proposed plan amending the plan to reflect that the total paid in including insurance proceeds as of June 30, 2020 is \$56,437.75; and plan payments commencing July 25, 2020 shall be \$2,206.18 per month.

At the hearing, **XXXXXXXXXX**

Debtor's proposed plan moves creditor Ally Financial to Class 4. The creditor is currently included in Class 2 with a remaining balance of \$3,925.74 plus interest to be paid on the claim. Trustee points out that this is the creditor with the vehicle that was totaled and for which insurance proceeds in the amount of \$7,603.75 exist to pay off the claim. Trustee asserts that the claim should be paid in full by the Trustee, or if the claim is to be paid by the Debtor then Trustee will return the insurance proceeds to the insurance.

At the hearing, **XXXXXXXXXX**

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on June 24, 2020. By the court’s calculation, 48 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

The Motion to Confirm the Modified Plan is XXXXX.

The debtor, Troy McDonald (“Debtor”) seeks confirmation of the Modified Plan to address defaults that occurred due to Debtor’s “forgetfulness” in making plan payments. Motion, ¶ 8; Dckt. 27. It is stated that Debtor’s son in law will now regularly meet with Debtor to make sure that the plan payments are made. *Id.* Debtor explains this in his Declaration, as well as the assistance to be provided by his stepson (misidentified as son in law in the Motion and Declaration). Declaration, Dckt. 29.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on July 16, 2020. Dckt. 36. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor fails to account for missed plan payments funds.
- B. Debtor may not be able to make plan payments.

DISCUSSION

Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Trustee notes that Debtor has failed to explain where the funds for the missed plan payments have gone. Further, Trustee notes that no declaration has been filed by the **stepson in support** of the assertion that the son-in-law will make sure future payment are made on time.

Moreover, Trustee is uncertain Debtor will be able to make the increased payments as the plan calls for payments of \$1,773.00 but Debtor's April 2019 Schedules show a monthly net income of \$1,562.00. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Debtor filed a Supplemental Declaration explaining that although he is 88 years old he does not believe he has a mental illness but that other events in his life for which he has to pay, mainly taking care of his partner and unexpected expenses, sometimes take precedence and he forgets that he has to make his plan payments. Dckt. 43. Debtor has now asked his step-son to assist him with this case by checking up on him making the payments every month, and that his Counsel has agreed to remind him as well. *Id.* Debtor also adds that he is aware he must increase his plan payment to \$1,803.00 and is able to lower his transportation expenses as he is now using his step-son's car when needed, and will decrease his budget for entertainment and recreation. *Id.*

However, the Debtor neglects to explain where the \$7,573.66 in "forgotten payments" is or was spent. If just "forgotten" to be paid, then the money would be in the bank and Debtor could just make a lump sum cure.

In looking at the original and now Supplemental Schedules I and J (Dckt. 39), the court notes that Debtor's family unit includes a second person, who is identified as a "Significant Other - Disabled & Unemployed." No income is show on Schedule I as being contributed by this dependent - no Social Security disability, no unemployment benefits, nothing to contribute to the household expenses.

In Debtor's Supplemental Declaration, he testifies to there being other extraordinary expenses that he faces for his Significant Other. The Debtor testifies under penalty of perjury:

[I] now live wi th a . . . year old woman who is disabled and unemployed with quite a few medical problems and I take care of paying for her doctor visits and medications because she cannot afford them. In addition there is always some expense that comes up. All I can say is that I have not been saving the money. Otherwise I would have given it to my attorney to reduce or eliminate the arrearage with a lumpsum catch up amount. Al so neither I nor my partner does any gambling .

Declaration p. 2:8-16; Dckt. 43.

While telling the court he "has not been saving the money," Debtor does not disclose where it has been going. If there are extraordinary medical expenses that regularly eat it up, Debtor does not provide for them on Supplemental Schedule J, keeping the medical and personal care services at the same amounts of \$100 a month. \$1,200 for medical and dental expenses for two persons, including one who has quite a

few medical problems and is disabled, is not a significant amount.

It being unclear where the \$7,573.66 has been diverted, the court cannot determine that the proposed Modified Plan is feasible.

At the hearing, **XXXXXXXXXX**

~~————— 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, Troy McDonald (“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/granted**, and Debtor’s Modified Chapter 13 Plan filed on June 24, 2020, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the 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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 26, 2020. By the court’s calculation, 46 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

<p>The Motion to Confirm the Modified Plan is XXXXX.</p>
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The debtor, Michael Jon Smirl and Brandi Victoria Smirl (“Debtor”) seek confirmation of the Modified Plan to catch up with plan payments after falling behind due to a drastic reduction of work hours due to COVID-19 but they are now back to working full time. Declaration, Dckt. 53. The Modified Plan provides for monthly payments of \$2,125.15 commencing June 2020 for months 11 through 21, followed by monthly payments of \$2,274.00 for months 22 through 60, and a 0 percent dividend to unsecured claims totaling \$16,906.48. Modified Plan, Dckt. 55. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on July 28, 2020. Dckt. 78. Trustee opposes confirmation of the Plan on the basis that:

- A. The plan exceeds the maximum period (60 months) amount allowed under the Bankruptcy Code.

- B. Class 1 arrearage amount must be clarified.
- C. Debtors have failed to file Supplemental Schedules.

DISCUSSION

Feasibility

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). According to the Chapter 13 Trustee, the Plan will complete in approximately 63 months due to the proposed plan payments only paying \$108,461.35, where the amount required to pay creditors is \$100,424.15, and Trustee fees will total approximately \$10,846.14.

Trustee notes that the plan payments would have to increase by \$45.00 for the remaining 49 months or increase the payment by \$58.00 beginning in month 22.

Class 1 Arrears

Trustee is unable to fully comply with Section 3.07 of the Plan as the proposed plan states that there is a post-petition arrearage for Class 1 Select Portfolio Servicing in the amount of \$4,279.86 but Trustee's accounting shows that the amount due for the unpaid installments is \$4,279.80.

The Trustee also notes that there are stated to be \$20,335.39 in post-petition arrears to be cured, but that these are actually pre-petition arrears (there appearing to be a clerical error), but that this may be corrected in the order confirming the plan.

Supplemental Schedules

Trustee notes that at the Meeting of Creditors Debtors had informed Trustee that their expenses had been detailed as separate in the prior Schedules because they were in the process of separating. Trustee is uncertain if this information is still accurate as the Declaration in support of the proposed plan states that they have not filed an amended budget on the basis that they are resuming their current confirmed payments and will be able to afford the increased payment in month 22 due to a 401k loan payoff. Moreover, no change of address has been for either debtor.

Trustee asserts that Debtors have failed to show that their plan complies 11 U.S.C. §1325(a)(6).

At the hearing, **XXXXXXXXXX**

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

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

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

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

Michael Jon Smirl and Brandi Victoria Smirl (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

24. [19-24657](#)-E-13 **MICHAEL/BRANDI SMIRL** **CONTINUED MOTION TO DISMISS**
[DPC-2](#) **Gabriel Liberman** **CASE**
6-3-20 [44]

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

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on 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). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss is XXXXXXXXXXXX
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The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtors, Michael Jon Smirl and Brandi Victoria Smirl (“Debtor”), are \$6,375.45 delinquent with monthly plan payments of \$2,125.15.

DEBTOR’S RESPONSE

Debtor filed a Response on June 16, 2020. Dckt. 48. Debtor states the delinquency occurred due to a loss of income resulting from the COVID-19 pandemic. Declaration, Dckt. 49. Debtor intends to file a modified plan to extend the length of the plan under the CARES Act prior to the hearing date.

DISCUSSION

Debtor is delinquent in plan payments. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

A hearing on a motion to confirm a modified plan is scheduled. The Trustee agreed to a continuance of a hearing on the Motion to Dismiss.

August 11, 2020 Hearing

At the hearing, **XXXXXXXXXX**.

25. [17-24755-E-13](#) **ROBBIE/CHRISTI HOLCOMB** **MOTION TO MODIFY PLAN**
[CYB-5](#) **Candace Brooks** **6-30-20 [109]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 1, 2020. By the court's calculation, 41 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is XXXXX.

The debtor, Robbie Allan Holcomb and Christi Anna Holcomb ("Debtor") seek confirmation of the Modified Plan to cure the default in plan payments after Debtor began full-time employment at a later date than anticipated and after losing income due to COVID-19. Declaration, Dckt. 112. The Modified Plan provides payments of \$1,040.00 commencing July 2020 for 65 months, and a 3 percent dividend to unsecured claims totaling \$224,251.00. Modified Plan, Dckt. 113. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on July 22, 2020. Dckt. 124. Trustee opposes confirmation of the Plan on the basis that:

- A. Plan is not feasible.
- B. Debtor fails to explain prior delinquency.

DISCUSSION

Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). According to the Chapter 13 Trustee, the Plan will complete in approximately 68 months due to the proposed plan payments only paying \$31,200.00, where the amount required to pay creditors is \$29,235.61, and the plan fails to account for Trustee’s fees. Without an accurate picture of Debtor’s financial reality, the court cannot determine whether the Plan is confirmable.

Prior Delinquency

Debtor’s Declaration explains that Debtor’s delinquency back in January 2020 was due to full-time employment starting at a later than anticipated and then loss of income and delayed unemployment benefits due to the COVID-19 crisis. Trustee points out, however, that Debtors have been delinquent in plan payments since September 2019. No explanation is provided by Debtors as to why they had been delinquent then.

At the hearing, **xxxxxx**

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

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtors, Robbie Allan Holcomb and Christi Anna Holcomb (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on July 17, 2020. By the court's calculation, 25 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 -----.

<p>The Objection to Confirmation of Plan is overruled.</p>

U.S. Bank National Association, as Trustee for Lehman XS Trust Mortgage Passthrough Certificates, Series 2007-16N ("Creditor") holding a secured claim, opposes confirmation of the Plan on the basis that:

- A. Plan fails to cure the full amount of Creditor's arrearage. Creditor provides an analysis demonstrating that the plan is not sufficiently funded to cure the arrearage on its claim as stated in the proof of claim it has filed in this case.

DISCUSSION

Creditor's objections is well-taken.

Failure to Cure Arrearage of Creditor

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts \$36,783.39 in pre-petition arrearage. The Plan does not propose to cure those arrearage. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearages.

Debtor filed a Response on July 25, 2020 indicating that after speaking with Creditor's counsel, Debtor has resolved Creditor's Objection by agreeing with Creditor to extend the length of the plan to 53 months. Dckt. 25. Debtor has sent a proposed order to Trustee increasing the number of months for the Plan to 53 months. *Id.* See Exhibit A.

The Plan, as amended to be extended to 53 months, complies with 11 U.S.C. §§ 1322 and 1325(a). The Objection is overruled.

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

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

The Objection to the Chapter 13 Plan filed by U.S. Bank National Association, as Trustee for Lehman XS Trust Mortgage Passthrough Certificates, Series 2007-16N ("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 is overruled, and Rayanne Cathleen Frazier's ("Debtor") Chapter 13 Plan filed on June 12, 2020, as amended to extend the life of the Plan to 53 months, 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.

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 Debtors, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 24, 2020. By the court's calculation, 48 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is XXXXX.

The debtor, Elmer Noe Crespin and Alma Yared Crespin ("Debtor") seek confirmation of the Modified Plan to extend the Plan to a total of 84 months and begin remitting payments after failing to make plan payments due to the COVID-19 pandemic which impacted Debtor's employment. Declaration, Dckt. 304. The Modified Plan provides for monthly plan payments of \$2,700.00 commencing August 25, 2020 for 27 months, and a 0.0 percent dividend to unsecured claims totaling \$142,490.04. Modified Plan, Dckt. 305. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on July 16, 2020. Dckt. 310. Trustee opposes confirmation of the Plan on the basis that:

- A. There is a discrepancy in the total amount of months for the Modified Plan.
- B. Debtor fails to explain prior delinquency.

DISCUSSION

Commitment Period Terms

Section 2.03 of Debtor's proposed plan proposes a commitment period of 84 months, where the Additional Provisions state 83 months. Trustee notes that Section 7 proposes a plan payment of \$79,670.89 total paid in through July 2020, then \$2,700.00 beginning 8-25-20 for 27 months. July is month 56 where Debtor's petition was filed November 3, 2015, so an additional 27 months equals 83 months.

Debtor filed a Reply agreeing with Trustee's assessment that the intended plan term is 84 months and for the order confirming the Plan to add language stating that the monthly plan payment will commence in August 2020 for 28 months. Dckt. 322.

Prior Delinquency

Debtor's Declaration explains that Debtor's delinquency was due to the COVID-19 pandemic which impacted Debtor's employment. Trustee points out, however, that Debtor was delinquent in plan payments in October 2019. No explanation is provided by Debtor as to why they had been delinquent then.

At the hearing, **xxxxx**

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

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

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

~~The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Elmer Noe Crespin and Alma Yared Crespin ("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 24, 2020, and amended as follows:~~

~~Plan payments of \$2,700.00 per month will commence August 25, 2020 for 28 months.~~

~~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.

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 the Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 30, 2020. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is denied.
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The debtor, Okharina O. Holmes ("Debtor") seeks confirmation of the Modified Plan to extend the term of the plan to provide for the two missed payments due to a reduction in income and also provide for a supplemental claim filed by her mortgage company. Declaration, Dckt. 33. The Modified Plan provides for monthly plan payments of \$3,409.77 for 63 months, and a 0.0 percent dividend to unsecured claims totaling \$22,228.94. Modified Plan, Dckt. 35. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on July 28, 2020. Dckt. 41. Trustee opposes confirmation of the Plan on the basis that:

- A. Plan is not feasible.
- B. Debtor seeks to schedule post-petition arrears that Trustee may not pay without order or provision under the additional provisions.

C. The Additional Provisions misstate tax refund year.

DISCUSSION

Insufficient Plan Payments

Trustee alleges that the Plan is not feasible. 11 U.S.C. § 1325(a)(6). The Plan will complete in approximately 71 months due to the proposed plan payments only paying \$197,766.66, where the amount required to pay creditors is \$186,317.74, and Trustee fees will total approximately \$19,776.67. Thus, the Plan may not be confirmed.

Scheduled Post-Petition Arrears

Under Class 1 section of the proposed plan Debtor has scheduled a post-petition arrearage in the amount of \$3,642.00. According to Trustee, there are no post-petition arrears and the mortgage is current. His records reflect a total disbursement of \$8,854.95 in mortgage payments. Without these post-petition payments, the plan would complete in 68 months.

Additional Provisions

Debtor's Additional Provision propose the turn over of tax refunds in excess of \$2,000 commencing with 2018 tax year. Trustee points out that the order confirming the March 2020 plan states Debtor would turn over any refunds over \$2,000 commencing with the 2020 tax year and thereafter. Trustee would not object to correcting this term in the order confirming the instant proposed plan.

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

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on the Debtor, on July 16, 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.
--

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

- A. Debtor failed to appear at the Meeting of Creditors.
- B. Debtor has failed to provide disposable income.
- C. Debtor has failed to provide her middle name.

DISCUSSION

Trustee's objections are well-taken.

Failure to Appear at 341 Meeting

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

The Continued Meeting of Creditors was held on July 23, 2020, and Trustee's Report indicates Debtor appeared. Trustee filed a report concluding the meeting as to Debtor. The court therefore determines that Debtor's appearance has resolved this Objection.

Failure to Provide Disposable Income

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

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

Trustee argues that Debtor's projected disposable income is not being applied to make payments to creditors with unsecured claims. Debtor listed \$0.00 income on Form 122-C for the past six months. Yet, Debtor indicates employment as a cook for the past two years with gross wages of \$2,353.86, a worker's compensation of \$1,242.97, and supplemental income from her daughter in the amount of \$350.00. Debtor must amend Form 122-C and Statement of Financial Affairs to correct or clarify her income. Until Debtor addresses the inconsistencies in her income, the Plan cannot be confirmed.

No Middle Name Provided

Debtor has failed to provide her middle name on the bankruptcy petition. Without accurate information, creditors are prevented from properly identifying this debtor. Debtor has failed to carry her burden of showing that the plan complies with 11 U.S.C. §§ 1325(a)(1) and (a)(6).

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

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

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

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

30. 18-20252-E-13 ADEL KHARUFEH MOTION TO MODIFY PLAN
RJ-3 Richard Jare 6-18-20 [90]

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

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

The debtor, Adel Juma Kharufeh (“Debtor”) seeks confirmation of the Modified Plan to become current in plan payments after loss of income caused by COVID-19. Declaration, Dckt. 92. The Modified Plan provides for monthly plan payments of \$110.00 for five months, followed by monthly plan payments of \$340.00 for the remainder of the plan, and a 0.0 percent dividend to unsecured claims totaling \$132,625.73. Modified Plan, Dckt. 93. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

A. There is a discrepancy in the total amount of months for the Modified Plan.

- B. Failure to explain prior delinquency.
- C. Debtor must file supplemental schedules that support his current budget reality.

DISCUSSION

Plan Payment Terms

Debtor proposes to adjust the plan payment to \$8,275.00 for the first 30 months ending with June 30, 2020, \$110.00 for 5 months, then \$340.00 for the balance of the plan. Trustee notes that June 2020 is actually month 29 of the Plan. Trustee is not opposed to Debtor correcting the plan payment in the order confirming to state \$8,275.00 total paid in through month 29 (June 2020), \$110.00 for 5 months, then \$340.00 for the remainder of the plan.

Prior Delinquency

Debtor's Declaration explains that Debtor's delinquency back in March 2020 was due to loss of income related to the COVID-19 crisis. Trustee points out, however, that Debtors have been delinquent in plan payments since November 2019. No explanation is provided by Debtors as to why they had been delinquent then.

At the hearing, **xxxxxx**

Schedules I and J Not Provided

Debtor's original Schedules from 2018 indicate Debtor was unemployed and receiving Workman's Comp Disability. Debtor now states in his Declaration that he is employed and experienced loss of employment due to COVID-19. Debtor suggests that "new schedules I and J budget might be required and we are working on developing it," but Trustee requests that now that Debtor is working and is proposing to extend the plan based on reduction of work hours, Debtor must now file Supplemental Schedules I and J in support of his current budget reality. This is not an unreasonable request, and Debtor must file Supplemental Schedules.

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

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

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

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

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

August 11, 2020 at 2:00 p.m.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 26, 2020. By the court’s calculation, 46 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

<p>The Motion to Confirm the Modified Plan is denied.</p>
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The debtor, Michael Lee Lucero and Maria Guadalupe Martinez (“Debtor”) seek confirmation of the Modified Plan to catch up with missed payments after a reduction and loss of income due to the COVID-19 crisis. Declaration, Dckt. 105. The Modified Plan provides for monthly payments of \$3,992.00 for months 22 through 60, and a 3.8 percent dividend to unsecured claims totaling \$19,008.57. Modified Plan, Dckt. 108. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on July 28, 2020. Dckt. 113. Trustee opposes confirmation of the Plan on the basis that:

- A. Plan may not be feasible.

DISCUSSION

Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor proposes plan payment of \$3,992.00 in the Motion and Plan, where as the Declaration states payments of \$494.00 for months 18 and 19, followed by monthly payments of \$3,769.00 for months 20 through 60. Moreover, Trustee points out that Debtor's amended Schedule J shows further reductions in expenses in order to afford the new plan payments. Trustee argues that Debtor may not be able to afford the plan when they are cutting expenses in an already "tight budget."

Debtor's states a post-petition arrearage in the amount of \$15,967.96 for Class 1 claim of Caliber Home Loans. However, according to Trustee's records, the correct amount in post-petition arrearage is \$17,938.63. Thus, Trustee is unable to fully comply with Section 3.07(b) of the Plan.

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

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

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Michael Lee Lucero and Maria Guadalupe Martinez ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 24, 2020. By the court's calculation, 48 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

<p>The Motion to Confirm the Modified Plan is denied.</p>
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The debtor, Kevin Brandon Bridges ("Debtor") seeks confirmation of the Modified Plan to adjust plan payments as Debtor's loss of business income due to COVID-19 and not yet received proceeds from a pending lawsuit. Declaration, Dckt. 85. The Modified Plan provides for monthly plan payments of \$416.00 for 42 months, followed by \$500.00 monthly payments for 40 months, and a 100 percent dividend to unsecured claims totaling \$30,000.00. Modified Plan, Dckt. 83. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on July 16, 2020. Dckt. 95. Trustee opposes confirmation of the Plan on the basis that:

- A. Additional Provisions of the proposed Plan offer conflicting plan payments and does not provide details for the proposed lump sum payment.
- B. Debtor fails to explain prior delinquency.

C. Debtor has failed to file required business documents.

DISCUSSION

Feasibility

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). No estimate of amount or expected date to be received is provided as to the lump sum payment proposed in the modified plan. Additionally, Debtor has failed to provide additional details about other pending litigation against General Motors or against John L. Sullivan. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Prior Delinquency

Debtor proposes to extend the plan due to loss of income related to the COVID-19 crisis. Trustee points out, however, that Debtor has been delinquent in plan payments since November 2019. No explanation is provided by Debtor as to why he had been delinquent then.

At the hearing, **XXXXXX**

Failure to File Business Documents Required by Schedule I

The Chapter 13 Trustee argues that Debtor has failed to file a statement of gross business income and expenses attached to Schedule I. Line 8a of Schedule I requires Debtor to "[a]ttach a statement for each property and business showing gross receipts, ordinary and necessary business expenses, and the total monthly net income." Debtor is required to submit that statement and cooperate with the Chapter 13 Trustee. 11 U.S.C. § 521(a)(3). Debtor has not provided the required attachment.

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 15, 2020. By the court's calculation, 57 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

<p>The Motion to Confirm the Modified Plan is granted.</p>

The debtor, Beverly Bauer ("Debtor") seeks confirmation of the Modified Plan because her employer has drastically reduced her ability to work overtime hours, which she usually depends on. Dckt. 145. Additionally, Debtor's sister who lives in her home and regularly contributes to household expenses has been unable to contribute as much due to COVID-19. *Id.* Declaration, Dckt. 145. The Modified Plan provides for payments of \$1,664.00 for 81 months, and a 100 percent dividend to unsecured claims totaling \$1,445.00. Modified Plan, Dckt. 147. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on July 14, 2020. Dckt. 157. Trustee opposes confirmation of the Plan on the basis that the plan does not complete within the 81 months proposed.

DISCUSSION

Failure to Complete Plan Within Allotted Time

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Chapter 13 Trustee, the Plan will complete in 139 months due to the Plan not including the post-petition delinquent mortgage payments in the calculations. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

Debtor states that a typographical error on the plan entered into Trustee's calculations, and that the correct monthly plan payment is \$1,916.00, but she actually plans to pay \$2,000.00 a month. Dckt. 161. At \$2,000.00 a month, the Plan will complete within the 81 months allotted. *Id.*

Debtor proposes to address this error by amending the plan payment to \$2,000 in the order confirming the Plan. See Exhibit A, Dckt. 163.

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, Beverly Bauer ("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, as amended:

to provide for \$2,000 plan payments for 28 months,

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.

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 26, 2020. By the court's calculation, 46 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

<p>The Motion to Confirm the Modified Plan is granted.</p>

The debtor, Evangelina Gerales Clariza ("Debtor") seeks confirmation of the Modified Plan to extend the plan by 24 months after experiencing loss of income due to COVID-19. Declaration, Dckt. 102. The Modified Plan provides for monthly plan payments of \$260.00 commencing on August 25, 2020 for 61 months, and a 0.0 percent dividend to unsecured claims totaling \$10,696.14. Modified Plan, Dckt. 101. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on July 28, 2020. Dckt. 110. Trustee opposes confirmation of the Plan on the basis that:

- A. The proposed plan was increased to 84 months without proper explanation as to the increase in expenses.

DISCUSSION

Feasibility

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor seeks to extend the plan to 84 months based on loss of income due to COVID-19. Debtor filed amended Schedules on June 26, 2020. Dckt. 104. Trustee points out that Debtor's Schedule I shows that Debtor's non-filing spouse's income has increased and Debtor's income has stayed the same. Moreover, Debtor's expenses have increased without explanation. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Debtor filed a Declaration in support of the amended Schedules stating that her income has decreased because she is no longer making commissions due to COVID-19, while her husband's income has increased. Debtor further explains the basis for the changes in expenses, including increased costs due to COVID-19. Dckt. 105.

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, Evangelina Gerales Clariza ("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 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.

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 the Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 24, 2020. By the court's calculation, 48 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

<p>The Motion to Confirm the Modified Plan is XXXXX.</p>
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The debtor, Umash Vinay Prasad and Sunita Prasad ("Debtor") seek confirmation of the Modified Plan to cure delinquency after loss of income and an increase in expenses due to COVID-19. Declaration, Dckt. 59. The Modified Plan provides for one payment of \$3,025.00, followed by monthly payments of \$2,904.00 for 41 months, and a 100 percent dividend to unsecured claims totaling \$22,608.67. Modified Plan, Dckt. 58. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on July 16, 2020. Dckt. 65. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor fails to explain prior delinquency.
- B. Additional Provisions affect monthly dividends prior to the hearing and affect Trustee's administration of the confirmed Plan.

DISCUSSION

Prior Delinquency

Debtor's proposed plan seeks to extend the plan term to 66 months due to loss of income related to the COVID-19 crisis. Trustee points out, however, that Debtor has been delinquent in plan payments since December 2019. No explanation is provided by Debtor's Declaration as to why they had been delinquent then.

Debtor filed a Supplemental Declaration addressing prior delinquency and explaining that Debtor was unable to make those payments after unexpected expenses, namely, a trip to Canada for Debtor's mother memorial service, the purchase of a new washing machine, tires for the car, and Christmas gifts. Dckt. 69. Additionally, Debtor made two car payments for their daughter **plus for her gas and insurance after her hours were reduced at work.** *Id.* Debtor further testifies that their daughter is now working full time and is again maintaining the car payment. *Id.*

Additional Provisions

Debtor's Additional Provisions adjust monthly dividends starting June 2020. As Trustee points out, these changes are proposed to begin prior to the hearing on this proposed plan and thus Trustee is unable to administer such change when both Trustee and Debtor are still bound to the terms of the confirmed Plan.

At the hearing, **XXXXXX**

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 30, 2020. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is XXXXX.

The debtor, Corey Lee Christopher Coleman ("Debtor") seeks confirmation of the Modified Plan to make up for missed payments due to COVID-19 and extend plan payments as allowed under the CARES act.. Declaration, Dckt. 138. The Modified Plan provides for monthly plan payments of \$1,900.00 for the remainder of the plan, and a 0.0 percent dividend to unsecured claims totaling \$40,365.47. Modified Plan, Dckt. 139. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on August 3, 2020. Dckt. 148. Trustee opposes confirmation of the Plan on the basis that:

- A. Plan states inaccurate amount in post-petition arrearage.
- B. Debtor failed to file Supplemental Schedules in support of the proposed plan.

C. The Internal Revenue Service was not properly served.

DISCUSSION

Post-Petition Arrearage

Debtor's Plan schedules post-petition arrearage in the amount of \$3,424.40 for Class 1 claim of JP Morgan Chase Bank NA. However, according to Trustee's records, the correct amount in post-petition arrearage is \$2,940.99. Thus, Trustee is unable to fully comply with Section 3.07(b) of the Plan. Trustee is not oppose to correcting the amount in the order confirming the plan.

Debtor filed a Response on August 3, 2020. Dckt. 148. Debtor agrees to amend the plan in the order confirming the plan with the correct post-petition amount. *Id.*

Feasibility

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Trustee is uncertain whether Debtor has the ability to make payments as **Debtor has not filed Supplemental Schedules. The most recent Schedules were filed in October 2018. See Dckt. 98.** Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

In his Response, Debtor states that the 2018 Schedules are still accurate as there was a period at the beginning of the COVID-19 crisis where his income was reduced but is now back to pre-COVID level. Dckt. 148.

Improper Service

Trustee argues that Debtor did not properly served the Internal Revenue Service as the certificate of service lists only:

Internal Revenue Service
Insolvency Section SA 537
4330 Watt Avenue
Sacramento, CA 95821-7000.

Dckt. 140.

Debtor's Response asserts that Debtor's Counsel served the other three addresses on the Roster of Public Agencies on July 28, 2020, and this amended plan does not alter the payments under the prior confirmed plan. Dckt. 148.

~~———— 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, Corey Lee Christopher Coleman ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~_____ **IT IS ORDERED** that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on June 30, 2020, and as amended as follows:~~

~~_____ Class 1 claim of JP Morgan Chase Bank NA with a post-petition arrearage in the amount of \$2,940.99,~~

~~_____ 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).

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, creditor, parties requesting special notice, and Office of the United States Trustee on July 23, 2020. By the court's calculation, 19 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, -----.

<p>The Motion to Extend the Automatic Stay is granted.</p>

Romy Elizabeth Oster ("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. 20-20368) was dismissed on July 6, 2020, after Debtor failed to make plan payments or confirm a plan. *See* Order, Bankr. E.D. Cal. No. 20-20368, Dckt. 38, 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 she did not have available income to make plan payments.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). As this court has noted in other cases, Congress expressly provides in 11 U.S.C. § 362(c)(3)(A) that the automatic stay **terminates as to Debtor**, and nothing more. In 11 U.S.C.

§ 362(c)(4), Congress expressly provides that the automatic stay **never goes into effect in the bankruptcy case** when the conditions of that section are met. Congress clearly knows the difference between a debtor, the bankruptcy estate (for which there are separate express provisions under 11 U.S.C. § 362(a) to protect property of the bankruptcy estate) and the bankruptcy case. While terminated as to Debtor, the plain language of 11 U.S.C. § 362(c)(3) is limited to the automatic stay as to only Debtor. The subsequently filed case is presumed to be filed in bad faith if one or more of Debtor's cases was pending within the year preceding filing of the instant case. *Id.* § 362(c)(3)(C)(i)(I). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* § 362(c)(3)(C).

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

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

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

Debtor 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 Romy Elizabeth Oster (“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.

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 26, 2020. By the court's calculation, 46 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is XXXXX.

The debtor, Jose Luis Hernandez ("Debtor") seeks confirmation of the Modified Plan to catch up with missed payments after loss of income due to COVID-19 crisis. Declaration, Dckt. 44. The Modified Plan provides for monthly plan payments of \$5,135.00 commencing July 25, 2020 for 73 months, and a 0.0 percent dividend to unsecured claims totaling \$5,422.58. Modified Plan, Dckt. 45. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on July 16, 2020. Dckt. 56. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor fails liquidation analysis.
- B. Plan is not feasible.

- C. There is a discrepancy in the post-petition arrearage amounts for Class 1 creditor.

CREDITOR'S OPPOSITION

Wilmington Savings Fund Society, FSB ("Creditor") holding a secured claim filed an Opposition on July 17, 2020. Dckt. 56. Creditor opposes confirmation of the Plan on the basis that:

- A. Debtor's proposed plan fails to provide for the full amount of Secured Creditor's post-petition arrears.

On August 7, 2020, Creditor filed a Withdrawal of Objection and Opposition. Dckt. 61.

DISCUSSION

Debtor Fails Liquidation Analysis

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor's plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). The Chapter 13 Trustee states that Debtor is proposing a 0.0 percent dividend to unsecured claims, while additional equity exists. Debtor has not explained how, under the proposed plan and the schedules filed under penalty of perjury, the unsecured claimants are entitled to a 0.0 percent dividend when there may be upward of \$25,175.00 in non-exempt equity.

Debtor filed a Response on August 4, 2020. Dckt. 59. Debtor agrees with Trustee's analysis and requests that the percentage to unsecured creditors be increased to a 100% dividend be made in the Order.

The Response provided by Debtor's counsel does not state how Debtor "missed" such an obvious defect in the Plan. Debtor provides no Declaration with the Reply. At best, it appears

Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Trustee calculates the Plan will complete in more than the 84 months proposed, possibly taking 89 months with 100% to unsecured creditors. The proposed plan payments will total \$374,855.00, where the amount required to pay creditors is \$345,190.29, and Trustee fees will total approximately \$37,485.50. Thus, the Plan may not be confirmed.

Debtor asserts that although the dividend to unsecured creditors has increased to a 100% dividend, Debtor's proposed Chapter 13 Plan is feasible at \$5,135.00 per month starting July 25, 2020 for 73 months.

Post-Petition Arrearage Provisions

The Trustee is uncertain of the treatment of the creditor included in Class 1 of the proposed plan. The creditor is included in Class 1 of the proposed modified plan with a scheduled claim for post-petition arrears of \$6,269.61 and an arrearage dividend on this amount of \$86.00. Trustee's records indicate four (4) monthly post-petition payments are in arrears for a total of \$10,400.00. Trustee requests that the Order

Confirming reflect that the Trustee shall pay the ongoing arrearage amount of \$10,400.00 as a separate claim at the rate of \$143 per month to pay the ongoing arrears within the 73 months remaining.

Debtor states that the difference between the amount that has become due per the true ongoing mortgage payment presented in creditor Wilmington's proof of claim, \$24,469.61, and the amount disbursed by the Trustee, \$18,200.00, is the accurate post-petition arrearage. As such, the post-petition arrearage owed to creditor Wilmington is \$6,269.61.

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 23, 2020. By the court's calculation, 49 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is XXXXX.

The debtor, Omar Urcuyo ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for monthly plan payments of \$2,000.00 for 54 months commencing August 25, 2020, with a 0% dividend to unsecured claims. Amended Plan, Dckt. 60. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CREDITOR'S OPPOSITION

U.S. Bank Trust, N.A. ("Creditor") holding a secured claim filed an Opposition on July 24, 2020. Dckt. 72. Creditor opposes confirmation of the Plan on the basis that:

- A. Plan improperly modifies Creditor's secured claim.
- B. Plan fails to cure pre-petition arrearage.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), on July 28, 2020. Dckt. 75. Trustee opposes

confirmation of the Plan on the basis that:

- A. The no-look fee is inappropriate in the current case.
- B. The Plan fails the liquidation analysis.
- C. The Plan may fail to provide adequate protection to the Creditor.

Debtor filed a Response to Trustee's and Creditor's Opposition on August 4, 2020, which the court discusses below. Dckt. 78.

DISCUSSION

Failure to Cure Arrearage of Creditor

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts \$408,091.87 in pre-petition arrearage. The Plan does not propose to cure those arrearage. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearage.

The court notes that the Plan includes an "Ensminger Provision," in which the Debtor seeks to make adequate protection payments to Creditor while the Debtor diligently prosecutes a loan modification, and if it is denied, Creditor may have relief from the stay. Creditor is also entitled to relief from the stay if Debtor fails to diligently prosecute (based on objective standards) the loan modification. Additionally, Creditor may seek relief from the automatic stay for any other non-monetary default grounds.

In the Plan it is stated that the loan modification request has already been submitted to Creditor and whether the loan is modified or the creditor is entitled to relief from the stay appears to be in Creditor's court. Creditor's attorney argues that no loan modification request has been received, but no testimony is provided by anyone as to that alleged fact.

Modification of an Obligation Secured Only by Principal Residence

Creditor argues that Debtor's Plan is an improper modification of a claim secured only by a security interest in real property that is Debtor's principal residence. Debtor is modifying the claim by proposing to reduce the monthly payment to Creditor from \$2,579.70 to \$1,650.00 while awaiting for a loan modification agreement. Creditor has filed a Proof of Claim indicating a secured claim in the amount of \$685,358.94, secured by a first deed of trust against the property commonly known as 864 Oak Ln, Rio Linda, California. Debtor's Schedules indicate that this is Debtor's primary residence. This modification violates 11 U.S.C. § 1322(b)(2), which prohibits the modification of an obligation secured only by Debtor's residence.

Debtor's Response states that the Caliber Home Loan Loss Mitigation Application was sent to Caliber on July 8, 2020 and forwarded to Jennifer C. Wong, of McCarthy & Holthus, LLP on August 4, 2020. Dckt. 78.

Moreover, Debtor agrees with Trustee that an adequate protection payment for Creditor would require at least \$1,988.09 per month.

The Plan term clearly is not a modification of the underlying obligation, and it so expressly states. Debtor is proposing to comply with 11 U.S.C. § 361 and provide adequate protection payments as a plan term while a loan modification request is diligently prosecuted. While there may be an issue of whether the payment is adequate protection, there is no modification of Creditor's rights on the underlying obligation, but only the application of the Bankruptcy Code as enacted by Congress to "adequate protect" Creditor's interests.

"No Look" Fee

Under Local Bankruptcy Rule 2016(a), compensation paid to attorneys for the representation of chapter 13 debtors is determined according to 2016-1(c), which provides for fixed fees approved in connection with plan confirmation. However, if a party in interest objects, such as the trustee, compensation is determined in accordance with 11 U.S.C. §§ 329 and 330.

Trustee objects to the \$6,000 "no look" fee in this case as this is not a business case.

In his Response, Debtor concedes that Debtor has closed his "retail" sales, and thus is a non-business case. Dckt. 78.

Debtor Fails Liquidation Analysis

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor's plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). The Chapter 13 Trustee notes that while Debtor has scheduled 18 cars without itemization as worth \$14,900.00, Debtor has not provided the details as to how the value of these cars was reached.

On June 23, 2020, Debtor filed an amended Schedule C listing all 17 cars individually and two car haulers as exempted under C.C.P. § 703.140(b)(2) and (b)(5). Dckt. 64.

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, Omar Bermudez Urcuyo ("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 **XXXXX**.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 19, 2020. By the court’s calculation, 53 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

<p>The Motion to Confirm the Modified Plan is granted.</p>

The debtor, Angela Rusfeldt (“Debtor”) seeks confirmation of the Modified Plan due to reduced income during shelter-in-place restrictions. Declaration, Dckt. 94. The Modified Plan provides for monthly payments of \$4,400.00 for an unspecified number of months, and a 0% dividend to unsecured claims totaling \$46,101.00. Modified Plan, Dckt. 97. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on July 14, 2020. Dckt. 103. Trustee opposes confirmation of the Plan on the basis that:

- A. Plan terms are uncertain.
- B. The Plan does not explain how Creditor’s forbearance of the loan will affect the plan.

DISCUSSION

Uncertain Plan Terms

Debtor's Plan fails to state the duration of plan payments under Section 2.03. According to Trustee's calculation, the plan term appears to be 64 months.

In her Response, Debtor states that it is her intent to extend the plan to 66 months and intended the payment of 3,750.00 to be applied to her creditors, excluding Nationstar Mortgage LLC, who had granted the forbearance. Dckt. 107.

Forbearance

The plan does not explain how the Notice of Forbearance filed by Class 1 creditor Nationstar Mortgage LLC d/b/a/Mr. Cooper on April 30, 2020, will affect the plan. *See* Dckt. 80. The Notice states that must fully cure the forbearance arrearage or Creditor may seek relief from the automatic stay upon expiration of the forbearance period." *Id.* Trustee disbursed the April 2020 payment, and notes that five (5) payments will come due once the forbearance period ends.

Debtor explains in her Reply that her intention is to cure Creditor's forbearance arrearage with the plan payments made during months 61 through 66 of her plan. Dckt. 107. While the Notice of Forbearance may state that all payments come due and Creditor may seek relief from the stay, such notice is not an order of the court modifying the stay.

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

IT IS ORDERED that Motion to Confirm the Modified Plan is granted and the proposed Modified Plan filed on June 23, 2020, as amended to provide for a term of 66 months, is confirmed. Counsel for the Debtor shall prepare an appropriate order, stating the above amendments, 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.

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 29, 2020. By the court's calculation, 43 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the 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 hearing on the Motion to Confirm the Modified Plan is continued to 2:00 p.m. on September 15, 2020.

On August 5, 2020, Debtor unilaterally filed a Notice of Continuance purporting to continue the hearing on a Motion to Confirm, with the hearing continued out for an additional thirty-four days.

The Chapter 13 Trustee filed an opposition to the Motion, which was first based on a perceived inability to make the plan payments. Dckt. 110. The Trustee also asserts that Debtor is \$5,000 delinquent in plan payments.

The Chapter 13 Trustee also asserts that the service given by the Debtor for the August 11, 2020 hearing is defective with respect to the Internal Revenue Service.

The court deems the Debtor's unilateral statement that it was removing something from this court's calendar as an ex parte motion for a continuance. The court grants such request.

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 Confirmation of a Modified Chapter 13 Plan filed by Marcus Buckner, the Chapter 13 Debtor, having been presented to the court, opposition having been filed, service not appearing to be sufficient, the Debtor requesting a continuance, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Motion to Confirm the Modified Chapter 13 Plan is continued to 2:00 p.m. on September 15, 2020.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on June 15, 2020. By the court's calculation, 57 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is granted.
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The debtor, Danielle Delgado ("Debtor") seeks confirmation of the Modified Plan to provide for plan payments after falling behind due to loss of income related to the COVID-19 crisis. Declaration, Dckt. 89. The Modified Plan provides for:

1. monthly plan payments of \$274.00 for twenty (20) months,
2. followed by \$350.00 plan payments for two (2) months,
3. and \$480.00 plan payments for 46 months,
4. with a 2 percent dividend to unsecured claims totaling \$59,904.00.

Modified Plan, Dckt. 91. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on July 22, 2020. Dckt. 99 Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor fails to explain prior delinquency.
- B. Debtor has failed to pay the 2019 tax refunds to Trustee.

DISCUSSION

Prior Delinquency

Debtor's Declaration explains that Debtor's delinquency back in April 2020 was due to her employer closing in April 2020 and a reduction of work hours on her second employment due to the COVID-19 crisis. Trustee points out, however, that Debtor has been delinquent in plan payments since June 2019. No explanation is provided by Debtors as to why she had been delinquent then.

Tax Refunds

Under the confirmed and proposed Plan, Debtor is to pay to Trustee any refunds over \$2,000. Trustee states that no tax refunds have been received to date.

Debtor filed a Reply on July 31, 2020 explaining that her prior delinquencies are due to being a single parent trying to make ends meet and that she has already scheduled a TFS payment for the 2019 tax refunds as well as a July 2020 plan payment. Dckt. 102.

~~————— 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, Danielle Nicole Delgado ("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 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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 29, 2020. By the court's calculation, 43 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is XXXXX.

The debtor, Leo Cabral ("Debtor") seeks confirmation of the Modified Plan to catch up with plan payments after falling behind in payments and later loss of income due to COVID-19. Declaration, Dckt. 31. The Modified Plan provides for monthly plan payments of \$1,332.00 commencing June 2020 through month 84, and a 3.5 percent dividend to unsecured claims totaling \$21,322.13. Modified Plan, Dckt. 33. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on July 28, 2020. Dckt. 38. Trustee opposes confirmation of the Plan on the basis that:

- A. Plan may not be feasible.
- B. Post-petition arrearage is inaccurate.

DISCUSSION

Feasibility

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). According to the Chapter 13 Trustee, the Plan will complete in 88 months with a 3.5% to creditors with unsecured claims. The proposed plan payments will total \$86,580.00, where the amount required to pay creditors is \$78,918.41, and Trustee fees will total approximately \$8,658.00. Thus, the Plan may not be confirmed.

Trustee notes that the plan may be feasible if Debtor were to increase plan payments to \$1,343.00 a month for the remaining 65 months.

Post-Petition Arrearage

Debtor's Plan lists post-petition arrearage in the amount of \$2,038.26 for Class 1 claim of Freedom Mortgage. However, according to Trustee's records, the correct amount in post-petition arrearage is \$2,028.04. Thus, Trustee is unable to fully comply with Section 3.07(b) of the Plan. ^{FN. 1.}

FN. 1. It does not appear that the Trustee is "unable" to comply with Section 3.07(b), but that the trustee is clarifying that the amount of the arrearage stated by creditor in the proof of claim, after being reduced for the payments made by the trustee on the arrearage stated in the proof of claim is \$xxxxx. The Trustee is able to perform the plan, basing the distributions on the arrearage as stated in the proof of claim. Plan, ¶ 3.02; Dckt. 33. The Trustee is correct in bringing this calculation error to the attention of the court, Debtor, and creditor.

Trustee requests that this clerical error is corrected in the order confirming the Plan correcting this amount.

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

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

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

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

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

APPEARANCE OF ERIC NIXDORF, COUNSEL FOR DEBTOR REQUIRED FOR AUGUST 11, 2020 HEARING

TELEPHONIC APPEARANCE

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee's attorney, creditors, parties requesting special notice, and Office of the United States Trustee on July 1, 2020. By the court's calculation, 41 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

<p>The Motion to Confirm the Amended Plan is denied without prejudice.</p>

The debtor, Andrea Jane Dean ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for monthly plan payments of \$180.00 for 36 months and a 0.0 percent dividend to unsecured claims totaling \$67,906.00. Amended Plan, Dckt. 28. 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 22, 2020. Dckt. 30. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor's Motion fails to provide a summary of the plan or allege grounds for relief.

- B. Debtor did not file a declaration or evidence in support of the plan as required under 11 U.S.C. § 1325(a).

Debtor filed a Response on July 22, 2020 addressing Trustee's objections, which is discussed below. Dckt. 33.

DISCUSSION

Trustee argues that Debtor has filed a Motion to Confirm a Plan failing to state grounds with particularity. Moreover, no declaration of the Debtor or other evidence was filed to support those assertions.

In her Response, Debtor contends that the motion as filed contains sufficient particularity of the relief requested and grounds to support it to comply with F.R.B.P. 9013.

Review of Minimum Pleading Requirements for a Motion

The Supreme Court requires that the motion itself state with particularity the grounds upon which the relief is requested. FED. R. BANKR. P. 9013. The Rule does not allow the motion to merely be a direction to the court to "read every document in the file and glean from that what the grounds should be for the motion." That "state with particularity" requirement is not unique to the Bankruptcy Rules and is also found in Federal Rule of Civil Procedure 7(b).

Consistent with this court's repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, applied the general pleading requirements enunciated by the United States Supreme Court to the pleading with particularity requirement of Bankruptcy Rule 9013. *See* 434 B.R. 644, 646 (N.D. Ala. 2010) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 545 (2007)). The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal* to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court. *See* 556 U.S. 662 (2009).

Federal Rule of Bankruptcy Procedure 9013 incorporates the "state with particularity" requirement of Federal Rule of Civil Procedure 7(b), which is also incorporated into adversary proceedings by Federal Rule of Bankruptcy Procedure 7007. Interestingly, in adopting the Federal Rules of Civil Procedure and of Bankruptcy Procedure, the Supreme Court endorsed a stricter, state-with-particularity-the-grounds-upon-which-the-relief-is-based standard for motions rather than the "short and plain statement" standard for a complaint.

Law and motion practice in bankruptcy court demonstrates why such particularity is required in motions. Many of the substantive legal proceedings are conducted in the bankruptcy court through the law and motion process. These include sales of real and personal property, valuation of a creditor's secured claim, determination of a debtor's exemptions, confirmation of a plan, objection to a claim (which is a contested matter similar to a motion), abandonment of property from the estate, relief from the automatic stay, motions to avoid liens, objections to plans in Chapter 13 cases (akin to a motion), use of cash collateral, and secured and unsecured borrowing.

The court in *Weatherford* considered the impact to other parties in a bankruptcy case and to the court, holding,

The Court cannot adequately prepare for the docket when a motion simply states conclusions with no supporting factual allegations. The respondents to such motions cannot adequately prepare for the hearing when there are no factual allegations supporting the relief sought. Bankruptcy is a national practice and creditors sometimes do not have the time or economic incentive to be represented at each and every docket to defend against entirely deficient pleadings. Likewise, debtors should not have to defend against facially baseless or conclusory claims.

434 B.R. at 649–50; *see also In re White*, 409 B.R. 491, 494 (Bankr. N.D. Ind. 2009) (holding that a proper motion must contain factual allegations concerning requirements of the relief sought, not conclusory allegations or mechanical recitations of the elements).

The courts of appeals agree. The Tenth Circuit Court of Appeals rejected an objection filed by a party to the form of a proposed order as being a motion. *St. Paul Fire & Marine Ins. Co. v. Continental Casualty Co.*, 684 F.2d 691, 693 (10th Cir. 1982). The Seventh Circuit Court of Appeals refused to allow a party to use a memorandum to fulfill the pleading with particularity requirement in a motion, stating:

Rule 7(b)(1) of the Federal Rules of Civil Procedure provides that all applications to the court for orders shall be by motion, which unless made during a hearing or trial, “shall be made in writing, [and] *shall state with particularity the grounds therefor*, and shall set forth the relief or order sought.” The standard for “particularity” has been determined to mean “reasonable specification.”

Martinez v. Trainor, 556 F.2d 818, 819–20 (7th Cir. 1977) (citing 2-A JAMES WM. MOORE ET AL., MOORE’S FEDERAL PRACTICE ¶ 7.05 (3d ed. 1975)).

Not stating with particularity the grounds in a motion can be used as a tool to abuse other parties to a proceeding, hiding from those parties grounds upon which a motion is based in densely drafted points and authorities—buried between extensive citations, quotations, legal arguments, and factual arguments. Noncompliance with Federal Rule of Bankruptcy Procedure 9013 may be a further abusive practice in an attempt to circumvent Bankruptcy Rule 9011 by floating baseless contentions to mislead other parties and the court. By hiding possible grounds in citations, quotations, legal arguments, and factual arguments, a movant bent on mischief could contend that what the court and other parties took to be claims or factual contentions in the points and authorities were “mere academic postulations” not intended to be representations to the court concerning any actual claims and contentions in the specific motion or an assertion that evidentiary support exists for such “postulations.”

Grounds Stated in Motion

Movant has not provided any grounds, merely unsupported conclusions of law. The entirety of the grounds upon which Movant asserts that relief is proper consists of:

Debtor Andres Jane Dean, hereby moves the Court herein to confirm her First Amended Chapter 13 Plan, filed and served

concurrently herewith pursuant to U.S.C. Sections 1322, 1324 and 1325. A copy of a proposed order is attached as Exhibit A. The Debtor contends that her plan is confirmable under the Bankruptcy Code and upon information and belief, that the Chapter 13 Trustee assigned to her does not oppose confirmation of her plan.

Motion, Dckt. 25.

In breaking these down, the Debtor:

1. Tells the court that she is moving for relief;l
2. A plan has been filed and served pursuant to 11 U.S.C. § 1322, 1324 and 1325; a
3. A copy of the order that Debtor has prepared for the order to sign is attached as Exhibit A;
4. Debtor argues the conclusion “that her plan is confirmable under the Bankruptcy Code;” and
5. That Debtor is merely informed and believes, but cannot affirmatively represent that the Chapter 13 Trustee does not oppose the plan.

Those “grounds” are merely an ultimate conclusion of law by Movant, obviating the need for the court to make that determination based on the grounds stated and evidence presented.

In her Reply, Debtor’s counsel argues that while the necessary grounds under the applicable statutes were not alleged, it should be deemed sufficient. Unfortunately, the court does not agree.

While stating the required grounds for the relief requested under these statutory provisions can be simply done, they cannot be ignored. The present Motion would fail even under the lesser “state a short and plan statement” in a complaint. This Motion is similar to a complaint which merely stated: “The other side breached the contract, give me money.”

Second, Debtor argues that nothing under the law requires the Debtor to provide personal knowledge testimony in support of confirmation. While it is possible that other persons have personal knowledge of facts to support the grounds upon which the relief is requested, in bankruptcy cases it is generally the Debtor who knows about his or her finances, his or her income, his or her expenses, his or her ability to work, and the like.

The personal knowledge testimony (F.R.E. 601, 602) provided as evidence to establish Movant’s right to relief is that of her attorney, Eric Nixdorf. Mr. Nixdorf provides the following personal knowledge testimony under penalty of perjury:

1. Mr. Nixdorf is over 18 years of age.

2. Mr. Nixdorf is the Debtor's attorney in this bankruptcy case.
3. Mr. Nixdorf is (merely) informed and believes (appearing not to have any actual knowledge or belief it is a true statement) the legal conclusion that the proposed plan complies with the requirements of 11 U.S.C. § 1325.

Declaration, Dckt. 27.

Mr. Nixdorf does not provide any testimony of any personal knowledge facts in support of confirmation. Rather, he seeks to pre-empt the court and dictate his legal conclusion for the court to then rubber stamp. Mr. Nixdorf seeks to further qualify (or insulate himself from possible sanctions) by stating that this is merely because he is informed and believes. While pleading something in a motion or complaint based on good faith information and belief may be proper, a witness cannot testify as to something they do not know, but are merely "informed and believes" (since it will let my side win).

No other evidence is presented in support of the Motion. No exhibits, not documents - nothing. Rather, the court is presented with a conclusion in the Motion telling the court what relief to grant and counsel being informed and believes what the legal conclusion should be.

Evidence in Support of Confirmation

As to the failure to file a Declaration, Debtor contends that there is nothing in the bankruptcy code or federal rules of bankruptcy procedure requiring a declaration containing the language stated as argued by Trustee. Debtor then asserts that while the Debtor does have the burden of proving by a preponderance of evidence all confirmation requirements, any party objecting to confirmation of a plan has the initial burden of producing evidence to support the objection.

Here, Debtor argues that Trustee does not contend that the amended plan as proposed does comply with Section 1325(a) or is not confirmable, only that in the Trustee's opinion, the Debtor has not provided sufficient evidence of this to the Court. Debtor has now filed a Declaration (Dckt. 34) containing the language cited by the Trustee. Debtor further contends that the declaration simply repeats the information in her schedules previously filed with the Court which were signed under penalty of perjury as well as the information provided to the Trustee under oath at her 341 meeting. Debtor does concede that it would have been preferable if she had filed her Declaration in support of her plan instead of that of her attorney.

The court agrees with Trustee that Debtor failed to present evidence to support her confirmation. The court generally declines an opportunity to do associate attorney work and assemble evidence for parties by going through the schedules and other documents filed.

At a very basic level, every law student is taught that the court relies on properly authenticated, admissible evidence to establish facts in any proceeding—the court cannot and does not merely take counsel at their word. Apart from the practical effect that the court has been given a request for relief without any established factual basis, the Local Rules also affirmatively require that evidence be filed along with every motion and request for relief. Local Bankr. R. 9014-1(d)(3)(D). Failure to comply with the Local Rules is grounds for an appropriate sanction. Local Bankr. R. 1001-1(g).

DECISION

Unfortunately, Debtor and Debtor's counsel have failed to provide the court with grounds in the Motion upon which relief can be granted. Further, Debtor and Debtor's counsel eschew the need to provide any evidence to the court to support the requested relief. Effectively, Debtor and Debtor's counsel preclude the court from considering the particularly stated grounds, consider the evidence, and the court then state the required findings of fact and conclusions of law. Instead, the Debtor and Debtor's counsel turn the federal judicial process into a mere rubber stamp of whatever legal conclusion that Debtor and Debtor's counsel dictate.

The court cannot determine that the Amended Plan complies with 11 U.S.C. §§ 1322, 1323, and 1325(a), the Movant Debtor has failed to carry her burden of proof and the Motion is denied without prejudice.

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Andrea Jane Dean ("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.

Tentative Ruling: The Motion Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1).

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

Below is the court's tentative ruling.

Local Rule 3007-1 Objection to Claim—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Chapter 13 Trustee, and Office of the United States Trustee on June 19, 2020. By the court's calculation, 53 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

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

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

Shannon Melissa Breedlove, the Chapter 13 Debtor, ("Objector") requests that the court disallow the claim of Cavalry SPV I, LLC as assignee of Citibank ("Creditor"), Proof of Claim No. 1-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$1,077.35. Objector asserts that the Statute of Limitations on the collection of contract claims in California is four years from the date the balance was due under the contract or four years from the date the last payment was made under the contract. Objector states that according to the Proof of Claim, the last transaction date was August 16, 2011 and charge off date was March 20, 2012. The date of last

payment on the Statement of Account Information attached to the Proof of Claim states August 16, 2011.

DISCUSSION

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

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

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

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

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

Cal. C.C.P. § 337(d).

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

Except as provided in section 524 of this title, if **applicable nonbankruptcy law**, an order entered in a nonbankruptcy proceeding, or an agreement **fixes a period for commencing or continuing a civil action** in a court other than a bankruptcy court **on a claim against the debtor**, or against an individual with respect to which such individual is protected under section 1201 or 1301 of this title, and such period has not expired before the date of the filing of the petition, then **such period does not expire until the later of--**

(1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or

(2) 30 days after notice of the termination or expiration of the stay under section 362, 922, 1201, or 1301 of this title, as the case may be, with respect to such claim.

A review of Proof of Claim No. 1-1 lists the charge off date as March 20, 2012. The court takes judicial notice that a creditor does not “charge off” an account if payments are being made or further credit is being extended. (This basic fundamental point of credit transactions is commonly known by both creditors and consumers alike.)

No payment or other transaction occurred after August 16, 2011. Thus, the four-year statute of limitations expired on August 16, 2015.

DECISION

This bankruptcy case was filed on December 9, 2017—846 days after the statute of limitations expired. The Proof of Claim was filed on December 20, 2017. At that time, the Statute of Limitations was “merely an affirmative defense” and there was no statutory prohibition on commencing a judicial proceeding or arbitration for an obligation after the Statute of Limitations expired.

On June 19, 2020, one thousand two hundred and eighty nine days (1,289) after this bankruptcy case was commenced, this Objection to Claim was filed. No explanation is provided why almost four years into a five year plan this objection is now being asserted.

No opposition has been filed, and the claim was filed after the applicable state law four year statute of limitations has expired.

No legal authority is provided for retroactively disgorging payments made on a claim for which no objection had been filed. Here, the objection is “merely” an affirmative defense that may be raised. If not raised, in 2017 there was no bar on a creditor seeking to judicially enforce an obligation for which the Statute of Limitations had run.

Additionally, no legal authority is given for this court to issue a mandatory injunction - order Creditor to repay any amounts, or to enter a monetary judgment for any amounts which Creditor was heretofore paid prior to the objection to claim being asserted.

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

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

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

The Objection to Claim of Cavalry SPV I, LLC as assignee of Citibank

("Creditor"), filed in this case by Shannon Melissa Breedlove, the Chapter 13 Debtor, ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Proof of Claim Number 1-1 of Creditor is sustained, and the claim is disallowed in its entirety.

Attorney's fees and costs, if any, shall be requested as provided by Federal Rule of Civil Procedure 54 and Federal Rules of Bankruptcy Procedure 7054 and 9014.

Tentative Ruling: The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1).

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

Below is the court's tentative ruling.

Local Rule 3007-1 Objection to Claim—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Chapter 13 Trustee, and the Office of the United States Trustee on June 19, 2020. By the court's calculation, 53 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

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

The Objection to Proof of Claim Number 2-1 of Cavalry SPV I, LLC is sustained, and the claim is disallowed in its entirety.

Shannon Melissa Breedlove, the Chapter 13 Debtor, ("Objector") requests that the court disallow the claim of Cavalry SPV I, LLC as assignee of Capital One Bank (USA), N.A. ("Creditor"), Proof of Claim No. 2-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$3,749.64. Objector asserts that the Statute of Limitations on the collection of contract claims in California is four years from the date the balance was due under the contract or four years from the date the last payment was made under the contract. Objector states that according to the

Proof of Claim, the last transaction date was June 16, 2011, and charge off date was January 20, 2012. The date of last payment on the Statement of Account Information attached to the Proof of Claim states June 16, 2011.

DISCUSSION

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

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

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

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

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

Cal. C.C.P. § 337(d).

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

Except as provided in section 524 of this title, if **applicable nonbankruptcy law**, an order entered in a nonbankruptcy proceeding, or an agreement **fixes a period for commencing or continuing a civil action** in a court other than a bankruptcy court **on a claim against the debtor**, or against an individual with respect to which such individual is protected under section 1201 or 1301 of this title, and such period has not expired before the date of the filing of the petition, then **such period does not expire until the later of—**

(1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or

(2) 30 days after notice of the termination or expiration of the stay under section 362, 922, 1201, or 1301 of this title, as the case may be, with respect to such claim.

A review of Proof of Claim No. 2-1 lists the charge off date as January 20, 2012. The court takes judicial notice that a creditor does not “charge off” an account if payments are being made or further credit is being extended. (This basic fundamental point of credit transactions is commonly known by both creditors and consumers alike.)

No payment or other transaction occurred after June 16, 2011. Thus, the four-year statute of limitations expired on June 16, 2015.

This bankruptcy case was filed on December 9, 2017 —907 days after the statute of limitations expired.

DECISION

This bankruptcy case was filed on December 9, 2017—907 days after the statute of limitations expired. The Proof of Claim was filed on December 21, 2017. At that time, the Statute of Limitations was “merely an affirmative defense” and there was no statutory prohibition on commencing a judicial proceeding or arbitration for an obligation after the Statute of Limitations expired.

On June 19, 2020, one thousand two hundred and eighty nine days (1,289) after this bankruptcy case was commenced, this Objection to Claim was filed. No explanation is provided why almost four years into a five year plan this objection is now being asserted.

No opposition has been filed, and the claim was filed after the applicable state law four year statute of limitations has expired.

No legal authority is provided for retroactively disgorging payments made on a claim for which no objection had been filed. Here, the objection is “merely” an affirmative defense that may be raised. If not raised, in 2017 there was no bar on a creditor seeking to judicially enforce an obligation for which the Statute of Limitations had run.

Additionally, no legal authority is given for this court to issue a mandatory injunction - order Creditor to repay any amounts, or to enter a monetary judgment for any amounts which Creditor was heretofore paid prior to the objection to claim being asserted.

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

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

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

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

The Objection to Claim of Cavalry SPV I, LLC as assignee of Capital One Bank (USA), N.A. ("Creditor"), filed in this case by Shannon Melissa Breedlove, the Chapter 13 Debtor, ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Proof of Claim Number 2-1 of Creditor is sustained, and the claim is disallowed in its entirety.

Attorney's fees and costs, if any, shall be requested as provided by Federal Rule of Civil Procedure 54 and Federal Rules of Bankruptcy Procedure 7054 and 9014.

Tentative Ruling: The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1).

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

Below is the court's tentative ruling.

Local Rule 3007-1 Objection to Claim—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Chapter 13 Trustee, and Office of the United States Trustee on June 19, 2020. By the court's calculation, 53 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

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

The Objection to Proof of Claim Number 5-1 of Cavalry SPV I, LLC is sustained, and the claim is disallowed in its entirety.

Shannon Melissa Breedlove, the Chapter 13 Debtor ("Objector") requests that the court disallow the claim of Cavalry SPV I, LLC as assignee of HSBC Bank Nevada N.A./Best Buy Co. Inc. ("Creditor"), Proof of Claim No. 5-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$1,510.14. Objector asserts that the Statute of Limitations on the collection of contract claims in California is four years from the date the balance was due under the contract or four years from the date the last payment was made under the contract. Objector states that

according to the Proof of Claim, the last transaction date was August 16, 2011, and charge off date was March 31, 2012. The date of last payment on the Statement of Account Information attached to the Proof of Claim states August 16, 2011.

DISCUSSION

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

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

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

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

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

Cal. C.C.P. § 337(d).

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

Except as provided in section 524 of this title, if **applicable nonbankruptcy law**, an order entered in a nonbankruptcy proceeding, or an agreement **fixes a period for commencing or continuing a civil action** in a court other than a bankruptcy court **on a claim against the debtor**, or against an individual with respect to which such individual is protected under section 1201 or 1301 of this title, and such period has not expired before the date of the filing of the petition, then **such period does not expire until the later of—**

(1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or

(2) 30 days after notice of the termination or expiration of the stay under section 362, 922, 1201, or 1301 of this title, as the case may be, with respect to such claim.

A review of Proof of Claim No. 5-1 lists the charge off date as March 31, 2012. The court takes judicial notice that a creditor does not “charge off” an account if payments are being made or further credit is being extended. (This basic fundamental point of credit transactions is commonly known by both creditors and consumers alike.)

No payment or other transaction occurred after August 16, 2011. Thus, the four-year statute of limitations expired on August 16, 2015.

This bankruptcy case was filed on December 9, 2017—846 days after the statute of limitations expired.

DECISION

This bankruptcy case was filed on December 9, 2017—846 days after the statute of limitations expired. The Proof of Claim was filed on February 16, 2018. At that time, the Statute of Limitations was “merely an affirmative defense” and there was no statutory prohibition on commencing a judicial proceeding or arbitration for an obligation after the Statute of Limitations expired.

On June 19, 2020, one thousand two hundred and eighty nine days (1,289) after this bankruptcy case was commenced, this Objection to Claim was filed. No explanation is provided why almost four years into a five year plan this objection is now being asserted.

No opposition has been filed, and the claim was filed after the applicable state law four year statute of limitations has expired.

No legal authority is provided for retroactively disgorging payments made on a claim for which no objection had been filed. Here, the objection is “merely” an affirmative defense that may be raised. If not raised, in 2017 there was no bar on a creditor seeking to judicially enforce an obligation for which the Statute of Limitations had run.

Additionally, no legal authority is given for this court to issue a mandatory injunction - order Creditor to repay any amounts, or to enter a monetary judgment for any amounts which Creditor was heretofore paid prior to the objection to claim being asserted.

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

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

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

The Objection to Claim of Cavalry SPV I, LLC as assignee of HSBC Bank Nevada N.A./Best Buy Co. Inc. (“Creditor”), filed in this case by Shannon Melissa Breedlove, Chapter 13 Debtor, (“Objector”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Proof of Claim Number 5-1 of Creditor is sustained, and the claim is disallowed in its entirety.

Attorney’s fees and costs, if any, shall be requested as provided by Federal Rule of Civil Procedure 54 and Federal Rules of Bankruptcy Procedure 7054 and 9014.

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

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

Below is the court's tentative ruling.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, creditors, and Office of the United States Trustee on July 17, 2020. By the court's calculation, 25 days' notice was provided. The court set the hearing for August 11, 2020. Dckt. 50.

The Motion to Approve Loan Modification 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 Approve Loan Modification is xxxxx.

The Motion to Approve Loan Modification filed by Candace Ward-Porter ("Debtor") seeks court approval for Debtor to incur post-petition credit. Cardinal Financial Company Limited Partnership ("Creditor") has agreed to a loan modification that will provide for a fixed rate 30 year loan, 3.00% interest, and a fixed monthly payment with taxes and insurance of \$2,130.00 per month.

~~The Motion is supported by the Declaration of Name of Declarant. Dckt. xx. The Declaration affirms Debtor's desire to obtain the post-petition financing and provides evidence of~~

~~Debtor's ability to pay this claim on the modified terms.~~

This post-petition financing is consistent with the Chapter 13 Plan in this case and with Debtor's ability to fund that Plan. There being no objection from the Chapter 13 Trustee or other parties in interest, and the Motion complying with the provisions of 11 U.S.C. § 364(d), the Motion to Approve the Loan Modification is granted.

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

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

~~The Motion to Approve Loan Modification filed by Candace Jean Ward-Porter ("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 court authorizes Candace Jean Ward-Porter to amend the terms of the loan with Cardinal Financial Company Limited Partnership ("Creditor"), which is secured by the real property commonly known as 4125 Singing Tree Way, Antelope, California, on such terms as stated in the Modification Agreement filed as Exhibit C in support of the Motion (Dckt. 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.

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 26, 2020. By the court's calculation, 46 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is XXXXX.

The debtor, Robert E. Godfrey ("Debtor") seeks confirmation of the Modified Plan to extend the plan to 72 months so as to catch up with plan payments after increased and unanticipated expenses and loss of income due to the COVID-19 crisis. Declaration, Dckt. 73. The Modified Plan provides for:

1. monthly plan payments of \$550.00 for eight (8) months commencing on June 2020,
2. followed by monthly plan payments of \$650.00 for eleven (11) months,
3. then monthly plan payments of \$850.00 for one (1) months,
4. followed by monthly plan payments of \$950.00 for 24 months, and
5. a 0.0 percent dividend to unsecured claims totaling \$151,502.00.

Modified Plan, Dckt. 71. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on July 28, 2020. Dckt. 77. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor is not delinquent in plan payments.
- B. Debtor's Schedules show an increase in income, not a decrease.

DISCUSSION

Debtor is required to file a plan in good faith. Trustee notes that although Debtor seeks to modify the plan on the basis that he was delinquent in plan payments, no such delinquency existed until June 2020 when it appears Debtor made a plan payment in the amount of \$550.00 (as required by the proposed plan), instead of the \$988.00 payment required under the confirmed plan.

Further, as Trustee notes, a review of Debtor's Schedules I and J show that Debtor's combined monthly income increased from \$8,678.15 to \$8,999.60, with increased expenses from \$8,078.00 to \$8,448.24.

Trustee also points out that Supplemental Schedule I states that the retirement loans for Debtor's wife end June 12, 2020 and December 14, 2021, yet the loan repayment amount increased from \$760.44 to \$770.00. Moreover, Trustee requested information pertaining to Debtor's debt management payments of \$346.00 per month with an estimated payoff of December 2020. Yet, Debtor only increases the plan payments by \$100.00 in February 2021 where the debt management payment should no longer be an issue.

Thus, the Plan may not be confirmed unless Debtor clarifies these inconsistencies.

Debtor filed a Declaration on August 5, 2020 addressing Trustee's objections. Dckt. 80. Debtor explains that the supplemental schedules filed before the motion to modify do not account for the reduction of pay of approximately 9.23% after employer mandated that each employee take two personal leave days off without pay as a result of COVID-19. *Id.*, ¶ 3. Expenses such as higher utilities, additional food, supplies and protective gear have also increased due to COVID-19. *Id.*, ¶ 4. Debtor also switched internet providers to get a faster internet with more bandwidth. *Id.*

At the hearing, **xxxxxxx**

~~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, Robert E. Godfrey ("Debtor") having been presented to the court, and

upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

50. [18-27297-E-13](#) **ARA/ANAHIT HOVAKIMYAN** **MOTION TO MODIFY PLAN**
[GEL-1](#) **Gabriel Liberman** **6-26-20 [41]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 26, 2020. By the court's calculation, 46 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

<p>The Motion to Confirm the Modified Plan is denied.</p>
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The debtors, Ara Hovakimyan and Anahit Hovakimyan ("Debtor") seek confirmation of the Modified Plan to resume making plan payments in August 2020 after loss of disability benefits related to a car accident and after returning to work, loss of employment due to COVID-19. Declaration, Dckt. 44. The Modified Plan provides for monthly plan payments of \$2,327.00 commencing August 2020 for months 21 through 60, and a 0.0 percent dividend to unsecured claims totaling \$168,692.37. Modified Plan, Dckt. 43. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on July 28, 2020. Dckt. 51. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor's scheduled vehicle payment as a Class 4 claim no longer applies.

DISCUSSION

Class 4 Claim

Debtor schedules a monthly payment of \$728.00 to GM Financial to be paid directly by Debtor. This vehicle was declared a total loss by Debtor's insurance after Debtor was involved in a collision on January 13, 2019. *See* Dckt. 20, 24. Creditor GM Financial filed an amended proof of claim on August 7, 2019 reducing the secured claim from \$39,331.35 to an unsecured deficiency claim with a balance of \$2,345.76 (after accounting for insurance proceeds in the amount of \$36,985.59). Proof of Claim, 2-2.

Debtor filed a Supplemental Declaration on August 4, 2020 agreeing with Trustee that the \$728.00 loan payment no longer exists and that its inclusion was an oversight they missed while working on the proposed plan. Dckt. 54, ¶ 4. After careful review of the filed schedules, Debtors discovered other information pertaining to Debtor's income that needed to be updated and amended Schedules I and J have been filed. *Id.*, at ¶ 5.

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

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtors, Ara Hovakimyan and Anahit Hovakimyan ("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.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 30, 2020. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

<p>The Motion for Allowance of Professional Fees is XXXXX.</p>
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Thomas O. Gillis, the Attorney ("Applicant") for Ignacio Gonzalez Lopez, the Chapter 13 Debtor ("Client"), makes a Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period March 29, 2019, through February 5, 2020. Applicant requests fees in the amount of \$8,415.00.

CHAPTER 13 TRUSTEE'S RESPONSE

Trustee filed a Response on July 28, 2020. Dckt. 172. The Court previously issued an order requiring Thomas O. Gillis to pay \$3,000.00 to the Chapter 13 Trustee and allowing him to file a motion for allowance of attorney fees by June 30, 2020. the Trustee has received and currently holds \$3,000 sent from Thomas O. Gillis. *Id.*, ¶ I.

Movant refers to the Fee Rubric proceeding in the motion. *Id.*, ¶ II. However, the analysis in this section is not clear to the Trustee, where he states he "will accept \$3,000 plus a \$1,200 credit against

the amount owed debtor pursuant to the Rubric,” where the instant case is not listed in the rubric order. *Id.*

Trustee believes that if the rubric applies to the instant case, this Application would fall under “Phase I”, and Applicant was seeking the no-look \$6,000 fee, Applicant is entitled to \$1,800.00 and thus \$1,200.00 of the \$3,000.00 would need to be disgorged under the Rubric if it were applied to this case. *Id.*, ¶ II, lines 14-19. However, Trustee believes this is not a business case and, as such, Applicant would be limited to \$4,000 under the Rubric under the original Schedule I, (LBR 2016-1(c)(1)), and only entitled to \$1,200.00 and thus \$1,800.00 would need to be disgorged under the Rubric. *Id.*, lines 20-24.

Trustee opposes the fee and requests the Motion be denied on the basis that:

- A. Applicant failed to provide a copy of the attorney fee contract. *Id.*, ¶ V(A).
- B. Applicant has not justified his hourly rate of \$425, where attorneys who regularly perform Chapter 13 cases charge between \$300 to \$375 an hour. *Id.*, ¶ V(B).
- C. Applicant should clarify provided billing and detail time for travel, other tasks performed by staff so the court can decide if the hours spent are reasonable. Applicant is entitled to compensation for services rendered but where Debtor did confirm any of the four plan propounded by Applicant, benefit to the Debtor is not clear. *Id.*, ¶ V(C).
- D. It is Trustee’s professional opinion that Applicant has failed to meet his burden of proof as to whether he is entitled to fees. As Trustee has stated to the court before:

I have been a Chapter 13 Trustee for almost 9 years. Prior to that, I specialized in consumer bankruptcy law where I represented debtor(s) in chapter 7 and 13 cases for almost 19 years. In my professional opinion, if this case had been prosecuted properly, it should have been a very simple Chapter 13 case. It is a 100% plan where the debtor had more than enough income to fund the plan. Instead, it was plagued by inaccurate schedules, failure to attend continued Meetings of Creditors, failure to produce requested documents in a timely manner, a failure to amend debtor’s schedules and Chapter 13 in a timely manner, and a failure to adequately defend the motions for relief from stay.

Id., ¶ VI.

UNITED STATES TRUSTEE'S OPPOSITION

Tracy Hope Davis, U.S. Trustee, filed an Objection on July 28, 2020. Dckt. 175. The U.S. Trustee objects to the allowance of \$8,415.00 to Applicant on the following grounds:

- A. Applicant fails to support representations that he performed 20.8 hours of work in connection with this case.
- B. Fees should be denied because the Applicant has failed to carry his burden of establishing that the attorney fees sought under Section 330 are reasonable and necessary. Namely, Applicant failed to maintain contemporaneous time records, thus, the court is unable to rely on the information contained in Exhibit A..
- C. Under the U.S. Court's decision in *Baker Botts, LLP v. Asarco, LLC*, Applicant is not entitled to any fees for the preparation of this Application.
- D. A review of the docket reveals that much of the Applicant's activity was not necessary and conferred no tangible benefit to the Debtor. The June 2 Civil Minutes note that Applicant prepared inaccurate schedules for the Debtor, which omitted a newly created business and omitted business income, and he did not appear at two 341 meetings. See Dckt. 151. The documents were filed under penalty of perjury and these legal errors were not harmless. Among these errors, Applicant failed to explain why the Debtor's residence is necessary for an effective reorganization, which resulted in the granting of the motion. His failure to properly defend a relief from stay motion left the Debtor vulnerable to the loss of his residence.
- E. Application is also devoid of information necessary for the Court to determine how the limited legal services purportedly rendered resulted in a benefit to creditors.
- F. The Court should reject references in the Application regarding a "credit against the rubric," as the rubric is not applicable to the Section 330 analysis. The Application is not seeking an "opt-in" flat fee; rather it is seeking fees based on an hourly rate.
- G. Applicant miscalculated the alleged unpaid balance and the amount he alleges he is due. It appears that 20.80 hours at \$425 per hour amounts to \$8,840.
- H. Applicant has admitted in another case, and now ignores the admission that he does not keep contemporaneous time records. The court has already indicated that the lodestar is not available to evaluate the factors set forth in § 330(a)(3) in light of Applicant's representation that he does not keep contemporaneous time records.

- I. Applicant fails to explain the time records in Exhibit A. Thus, court cannot rely upon this information to determine the reasonableness of the fees.
- J. No fees should be awarded for preparing and filing the instant application on the basis that time related to litigating a fee application is generally not allowed. See *Baker Botts, LLP v. Asarco, LLC*, 135 S. Ct. 2158, 2166-69 (2015) (time spent litigating a fee application only benefits the professional, not the estate; “[b]ecause § 330(a)(1) does not explicitly override the American Rule with respect to fee-defense litigation, it does not permit bankruptcy courts to award compensation for such litigation”).
- K. Application erroneously provides there are no charges for preparing the fee application; yet there is a billing entry stating “Prepared “Prepared and Filed Attorney Fee Application [TOG-3]” with fees of \$637.50.
- L. Applicant has failed to establish that his hourly rate is reasonable. The hourly rate of \$425 is greater than the amount agreed to under the cancelled Rights and Responsibilities Agreement (Dckt. 9) between the Debtor and the Applicant, thus, the Applicant’s request for fees using an inflated hourly rate is unconscionable.
- M. Applicant billed for services related to attending the meeting of creditors that were not rendered. Applicant bills for a meeting of creditors on August 30, 2019 that did not occur. Applicant also billed travel time at \$425 per hour. Courts have recognized it is unreasonable to assess a full hourly rate for travel except where an attorney is able to perform work while traveling. See *In re McKeeman*, 236 B.R. 667 (8th Cir. B.A.P. 1999); *In re Anderson Grain Corp.*, 222 B.R. 528 (Bankr. N.D. Tex. 1998); *In re Bennett Funding Group, Inc.*, 213 B.R. 234 (Bankr. N.D.N.Y. 1997).
- N. The Application includes several time entries for reviewing and calendaring of a document and are charged at Applicant’s attorney rate. Attorneys cannot assess fees at an attorney’s rate for ministerial or secretarial tasks. See e.g., *In re Idak Corp.*, 26 B.R. 793 (Bankr. D. Mass. 1982); *In re Automobile Warranty Corp.*, 138 B.R. 72 (Bankr. D. Colo. 1991).

APPLICABLE LAW

Reasonable Fees

A bankruptcy court determines whether requested fees are reasonable by examining the circumstances of the attorney’s services, the manner in which services were performed, and the results of the services, by asking:

- A. Were the services authorized?
- B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?
- C. Are the services documented adequately?
- D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?
- E. Did the attorney exercise reasonable billing judgment?

In re Garcia, 335 B.R. at 724 (citing *In re Mednet*, 251 B.R. at 108; *Leichty v. Neary (In re Strand)*, 375 F.3d 854, 860 (9th Cir. 2004)).

Lodestar Analysis

For bankruptcy cases in the Ninth Circuit, “the primary method” to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves “multiplying the number of hours reasonably expended by a reasonable hourly rate.” *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate, however. *See id.* (citing *Unsecured Creditors’ Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

Reasonable Billing Judgment

Even if the court finds that the services billed by an attorney are “actual,” meaning that the fee application reflects time entries properly charged for services, the attorney must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. An attorney must exercise good billing judgment with regard to the services provided because the court’s authorization to employ an attorney to work in a bankruptcy case does not give that attorney “free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery,” as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat’l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) (“Billing judgment is mandatory.”). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

- (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?
- (b) To what extent will the estate suffer if the services are not rendered?

(c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

In re Puget Sound Plywood, 924 F.2d at 958–59 (citing *In re Wildman*, 72 B.R. 700, 707 (N.D. Ill. 1987)).

FEES AND COSTS & EXPENSES REQUESTED

Fees

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories.

General Case Administration: Applicant spent 8.9 hours in this category. Applicant met with the client, prepared all documents necessary for the Chapter 13 case, and reviewed documents related to the case.

Meeting of Creditors: Applicant spent 7.10 hours in this category. Applicant attended the initial 341 hearing on May 16, 2019 and the two following continued 341 Meetings; and advised client before and after each meeting.

Motions, Responses and Objections: Applicant spent 4.8 hours in this category. Applicant reviewed and responded to the Trustee's and Creditor's Objections to Confirmation of plans; prepared and filed opposition as well as supplemental opposition to the Trustee's Motion to Dismiss; prepared and filed the Debtor's First Amended Plan; prepared and filed Debtor's Second Amended Plan; and prepared and filed a response to Creditor's Motion for Relief from Stay.

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The persons providing the services, the time for which compensation is requested, and the hourly rates are:

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Thomas O. Gillis	20.80	\$425.00	\$8,840.00
	0	\$0.00	<u>\$0.00</u>
Total Fees for Period of Application			\$8,840.00

The court notes that there seems to be a clerical error in the fee calculation. Applicant requests \$8,215 for 20.80 hours of work. However, that amount in fees is the total for 19.80 hours.

Costs & Expenses

Applicant does not seek costs through this Application.

FEES AND COSTS & EXPENSES ALLOWED

The court has reviewed the detailed time records presented by Applicant. Exhibits A and B, Dckt. 158. The time is billed in tenth of an hour increments, with some as small as 0.10 and the three largest being: 3.00 for first First Meeting of Creditors, including travel time, on May 16, 2019; 3.00 for the fourth First Meeting of Creditors, including travel time, on August 30, 2019; 1.50 for initial interview with clients on March 29, 2019, and 1.50 for this fee application on June 30, 2020.

With respect to the May 16, 2019 first First Meeting of Creditors, a review of the court's files discloses that Applicant had several other first meetings that same date and time for other clients in the following cases:

In re Montano, 19-22212

In re Avalos, 19-22213

Debtor's First Meeting of Creditors was continued to June 27, 2019. In the Trustee's Objection to Confirmation, several of the grounds stated include: (1) Debtor failing to disclose having transferred the sole proprietorship business into a corporation; (2) Debtor failing to disclose income from the corporation; and (3) Debtor having not provided the required business documents. Dckt. 16.

For the June 27, 2019 continued meeting of creditors, the Trustee Docket Entry Report of June 28, 2019, is that neither the Debtor nor Applicant appeared at that meeting, so it was continued to July 25, 2019. The Trustee's July 26, 2019 Docket Entry Report for the third First Meeting of Creditors states that neither the Debtor nor Applicant appeared, and that the First Meeting was re-continued to August 29, 2019,

This led to the Chapter 13 Trustee filing a motion to dismiss on July 30, 2019. Dckt. 34. In giving the Debtor the benefit of the doubt, the court continued the hearing on the Motion to Dismiss, notwithstanding Applicant not appearing at the hearing to argue the opposition:

DISCUSSION

The court notes that Debtor's Response did not address why Debtor did not appear at the last two continued Meetings of Creditors. At the hearing the [sic] no appearance was made by Debtor or Debtor's counsel. The Trustee reported that Debtor has not provided the missing documents, but only copies of the incomplete documents provided before.

Given the Debtor is current and the Plan provides for a 100% unsecured dividend the Trustee's counsel argued persuasively to have the hearing continued.

Civil Minutes, Dckt. 47. As seen above, Debtor's case was almost dismissed at that time, Applicant not being there to present Debtor's case. But for the Trustee's counsel stepping up, the present application would be moot.

The court next reviews the Debtor's and Applicant's attempt to prosecute the Amended Chapter 13 Plan to confirmation. Interestingly, on Exhibit B (Applicant's task billing analysis)

Applicant has only 0.80 hours of time for preparing and filing the motion to confirm the amended plan, the amended plan, the supporting documents for the amended plan motion, and the notice of hearing. 0.80 hours appears woefully inadequate for such preparation. As discussed by the court in the Civil Minutes for the hearing on the Motion to Confirm the Amended Plan, Dckt. 64, (emphasis added):

As stated in the court's ruling on June 11, 2019, Debtor's Plan must provide for the secured creditor's claim and the Plan does not provide for the full payment of arrearages. See 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B).

It appears that **Amended Plan and Motion to Confirm were filed as a canard to improperly deflect the Chapter 13 Trustee in prosecution of a then pending Motion to Dismiss. The court cannot identify any good faith basis for merely refiling a defective plan that does not comply with the Bankruptcy Code and then state in the Motion (subject to the Fed. R. Bankr. P. 9011 certifications) that such Plan "complies" with the Bankruptcy Code. The objection to this Plan was sustained and confirmation denied. Orders, Dckts. 28, 29. Denial of the confirmation of the defective plan was not "without prejudice," and Debtor and Debtor's counsel had no basis for attempting to relitigate such final denial of that defective Plan.**

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

As seen above, Applicant's conduct and legal skill demonstrated were not of a higher legal caliber or one that would warrant an hourly rate at the higher end of the consumer representation practice..

Applicant took a second crack at confirming a Second Amended Plan. The hearing on the Motion for the Second Amended Plan was conducted on January 28, 2020. As stated in the Civil Minutes, this Motion was denied as well, this time because the Debtor was defaulting in the Plan payments. Dckt. 102.

Thus, as of Applicant's February 2020 suspension from the practice of law, no plan was confirmed, the Debtor was defaulting in payments, Applicant was not appearing to oppose the motion to dismiss, and Applicant's efforts in confirming the First Amended Plan were determined by the court to be a mere canard and not good faith prosecution of the case.

Going back to the filing of this case, Applicant certified that the fixed legal fee in this Chapter 13 case was \$6,000.00, which amount could only be for a business Chapter 13 case. L.B.R. 2016-1. This is stated in the Disclosure of Compensation filed on April 19, 2020. Dckt. 11 at 48. On Schedule I Debtor states under penalty of perjury that he is employed as a Laborer for Abra Auto Body & Glass in Sacramento, California. *Id.* at 21. No business income is listed, just the Debtor and Co-Debtor's wage income (the Co-Debtor being a school teacher). A review of Schedule J discloses no business expenses. *Id.* at 23-24. On the Statement of Financial Affairs Debtor states under penalty of perjury that he had a sole proprietorship, Affordable Landscaping Services, but that terminated in March 2019. *Id.* at 31.

Thus, based upon the information provided by Debtor under penalty of perjury, this was not a

business Chapter 13 for which Applicant could properly have the client agree to a \$6,000.00 flat fee.

Also during this representation, Applicant provided legal services opposing a motion for relief from the stay as to the Debtor's residence. Applicant, again, did not present himself well, with the court stating:

DEBTOR'S RESPONSE

Debtor's counsel filed a Response on December 17, 2019. Dckt. 87. The entire Response is as follows:

Debtor, Ignacio Lopez, hereby responds to Creditor's Motion for Relief from Automatic Stay.

On December 17, 2019, Debtor filed a Second Amended Chapter 13 Plan. Said plan has been set for hearing on January 28, 2019. Debtor believes the Amended Plan will satisfy the delinquency and cure the arrears to the creditor.

Debtor requests the Motion for Relief from Stay be denied. *Id.*

...

The onus was on the Debtor and Debtor's counsel to explain [11 U.S.C. § 362(g)(2)] how the Property is necessary for an effective reorganization. However, Debtor's Response only notes an amended plan was filed. Therefore, based upon the evidence submitted to, the court also determines the property is not necessary for any effective rehabilitation in this Chapter 13 case. Relief must therefore be granted pursuant to 11 U.S.C. § 362(d)(2).

Again, Applicant's legal services and skill presented (even on basic issues of who has the burden of proof/persuasion) are not those at the higher end of consumer attorney hourly rates.

Interestingly, Applicant's task billing analysis shows that for critical matters such as preparing a Chapter 13 Plan, drafting the motion to confirm, preparing the declarations, assembling the evidence, making sure the legal points and authorities are addressed, and noticing the hearing, Applicant would spend only 0.7 hours (December 17, 2019 billing, Exhibit B) and 0.80 hours (August 29, 2019 billing, Exhibit B). However, for this Fee Applicant, Applicant has billed 1.50 hours - double the time he would spend on the Debtor's critical matters.

In support of his \$8,415.00 in fees during the first six months of the Chapter 13 case when no plan could be confirmed and relief from the stay was granted, Applicant has provided his Declaration. Dckt. 159. To support an hourly rate of \$425.00 for representing consumer Chapter 13 debtors, Applicant compares himself to four other attorneys. As part of this Applicant touts having practiced law for 54 and notes that this attorneys have far less experience.

- A. Daniel L Egan, who began practicing 23 years after Applicant, so only has 31 years experience as an attorney, who has a billing rate of \$415.00 an hour.

- B. Kurt F. Vote, who began practicing 25 years after Applicant, so only has 29 years experience as an attorney, who has a billing rate of \$400.00 an hour.
- C. Howard S. Nevins, was began practicing 18 years after Applicant, so has only 36 years experience as an attorney, who has a billing rate of \$440.00 an hour. ^{FN. 1.}
- D. J. Russell Cunningham, who was admitted to practice 20 years after Applicant, so has only 34 years experience as an attorney, who has a billing rate of \$425.00 an hour.

FN. 1. Mr. Nevis is a former law partner of this judge and was in the same firm for approximately 24 years of the judge's 26 years with that firm.

The court knows Mr. Egan, Mr. Nevins, and Mr. Cunningham and their legal skill and knowledge very well, having practiced as an attorney for twenty-six years and now for more than ten years as a judge of this court. The court is not familiar with Mr. Vote's practice, skill, and legal ability.

Applicant has presented the court with these four attorneys as examples of attorneys with lesser skills than Applicant has, therefore Applicant is justified in charging his clients \$425.00 an hour and such is reasonable when considered by the court pursuant to 11 U.S.C. § 329.

While it may sound like a "snotty" response, the court responds now the same as it did at the hearing when Applicant presented these attorneys as comparable or lesser skill level: "Mr. Gillis, you are not a Mr. Nevins, a Mr. Egan, or a Mr. Cunningham." These attorneys handle complicated Chapter 11 matters, successfully navigating as either creditor or debtor in possession counsel. They all manifest a legal ability, knowledge, and savvy that well surpasses that of Applicant.

At best, using the three attorneys known to this judge, Applicant might warrant an hourly rate half that of these three. While not having Applicant appear in front of this judge on a large number of Chapter 13 cases, in the early 2010's, Applicant was attempting to seat himself as the Chapter 11 and Chapter 12 attorney expert in the Modesto Division Courthouse. Those cases did not go well, with this judge ultimately ordering that no *ex parte* motions to employ Applicant or any attorneys working for him, but they would have to file noticed motions and explain to the court how they had both the skill and time to devote to representing the debtor in possession in a Chapter 11 or Chapter 12 case.

After that, Applicant did not file any more Chapter 11 or 12 cases in the Modesto Division, but moved his Chapter 11 and Chapter 12 practice to the Fresno Division. That did not go well, and ultimately Applicant "chose" to take on representing non-English speaking clients in Chapter 13 cases. In that limited practice area, Applicant pushed a lot of cases through.

The order for Applicant to file a fee application was prior to the adoption of the Fee Rubric to deal with the 400-plus Chapter 13 cases that Applicant cannot fulfill his obligations of representation to receive a fixed fee as agreed with his clients due to his suspension from the practice of law. Under the Fee Rubric, for a case in which the First Meeting of Creditors was concluded but no plan confirmed, Applicant would be entitled to a fee of \$1,200 (30% of a \$4,000 fixed fee). *In Matter of Gillis*, 20-202; Fee Rubric Order, Dckt. 234. Under the Fee Rubric Order, Applicant or any other party in interest may

seek to have the fee set at a different amount based on specific facts and circumstances in the case. The court treats this Application as such a request.

Applicant was able to get the case filed, Schedules filed, and the case continued on life-support notwithstanding his failing to appear and failing to file legally sufficient pleadings. Applicant is being compensated for letting this Debtor “hang” in bankruptcy until another attorney could substitute in to prosecute the case.

With respect to an hourly rate, \$300 would be more than generous. While having many years as an attorney, Applicant does not manifest or demonstrate the skill and ability of those he has chosen to compare himself with. Not only were the pleadings inadequate in this case, but some bordered on sanctionable under Federal Rule of Bankruptcy Procedure 9011.

The two plans that were advance were dead on arrival. The opposition to the motion for relief, incomplete.

Additionally, it appears that Applicant is double or triple billing for travel time. Applicant chose to take a case in Sacramento, knowing that travel was involved. He was not forced to and he cannot reasonable expect a consumer client to pay him \$400+ per hour for sitting in the car listening to music on the radio. It appears that Applicant’s economic strategy was to have multiple cases set for First Meetings of Creditors to make it worth Applicant’s time to run to and from Sacramento. But what Applicant proposes here is that each client is to pay him \$425 an hour for the three hours it took to do their First Meetings of Creditors conducted within the same hour by the Trustee. Thus, for three hours of his time, Applicant is billing his clients 9 hours of time. This is clearly unreasonable and not consistent with the ethical and legal obligations owed by an attorney to his client (especially the less sophisticated consumer, borrowing from the consumer protection standards under federal and state law, who seeks the assistance of the very sophisticated attorney).

Of the 20 hours of time, two-thirds of it was non-productive. This relates to motions that were not properly prepared or supported. Attending hearing for the motions not properly prepared or supported. Billing for repeated First Meetings of Creditors.

The court allows \$1,800 in legal fees for the services provided. On an hourly basis, this is compensation for six hours work. This is 50% more than under the Fee Rubric, and probably is excessive, but it is not grossly unreasonable for Applicant keeping this case on life-support, even though it was not diligently, actively, properly prosecuted.

Applicant is allowed, and the Chapter 13 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	\$1,800.00
Costs and Expenses	\$0.00

pursuant to this Application as final fees and costs pursuant to 11 U.S.C. § 330 in this case.

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

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

The Motion for Allowance of Fees and Expenses filed by Thomas O. Gillis (“Applicant”), Attorney for Ignacio Gonzalez Lopez, Chapter 13 Debtor, (“Client”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Thomas O. Gillis is allowed the following fees and expenses as a professional of the Estate:

Thomas O. Gillis, Professional employed by Chapter 13 Debtor

Fees in the amount of \$1,800.00,

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for Chapter 13 Debtor.

IT IS FURTHER ORDERED that Mr. Gillis having been paid \$3,000.00 by the Debtor, he shall pay the \$1,200.00 in excess of the allowed fee to the Clerk of the Court as provided in the Order Applying the Fee Rubric to the Chapter 13 Cases of Trustee David Cusick (In re Matter of Gillis, 20-202; Order, Dckt. 232), and if not paid, this Order may be enforced as a judgment as provided in the Order Applying the Fee Rubric, by David Cusick, the Chapter 13 Trustee, and the U.S. Trustee.

DEBTOR DISMISSED:

07/08/2020

JOINT DEBTOR DISMISSED:

07/08/2020

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

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

Sufficient Notice Not Provided. No Proof of Service was filed in support of the Motion showing the that the Motion and supporting pleadings were served on the relevant parties.

At the hearing, **xxxxxx**

The Motion to Set Aside Dismissal of Case has **not** been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1).

<p>The Motion to Set Aside Dismissal of Case is xxxxxxxxxx.</p>

Robin Arlene Harland and Thomas Scott Harland ("Debtor") filed the instant case on June 12, 2019. Dckt. 1. A Plan was confirmed on September 20, 2019. Dckt. 48.

On July 12, 2020 Debtor filed the instant motion requesting the court reconsider the Order on Trustee's Motion to Dismiss be reconsidered and that the Order dismissing the case entered on July 8, 2020 be vacated. *See* Dckt. 71.

INSUFFICIENT NOTICE OF MOTION

Applicant did not provide Proof of Service. Federal Rule of Bankruptcy Procedure 2002 requires notice to parties in interest. The court is unable to determine without the Proof of Service whether notice was actually provided to parties in interest. Therefore, the Motion is denied without prejudice.

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

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

The Motion to Set Aside Dismissal of Case filed by Stephen M. Reynolds (“Counsel”), Attorney for Robin Arlene Harland and Thomas Scott Harland, the Chapter 13 Debtors, (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice.

**THE COURT HAS PREPARED THE FOLLOWING ALTERNATIVE RULING
IF APPLICANT PROVIDES SUFFICIENT NOTICE.**

On June 1, 2020, the Chapter 13 Trustee, David Cusick (“Trustee”), filed a Motion to Dismiss the Case due to (1) Debtor was delinquent in plan payments and (2) Debtor’s Plan would not complete in the time allotted by the proposed plan. Dckt. 58. On July 1, 2020, a hearing on the Motion to Dismiss was held, and the Motion was granted. Dckt. 67.

Counsel for Debtor testifies that he was preparing an amended plan in response to the motion to dismiss and prepared an opposition that he shared with counsel for the Chapter 13 Trustee. Declaration, Dckt. 75. Counsel testifies that he served Trustee and parties requesting special notice but, unfortunately, though a Proof of Service was filed, Counsel failed to file the Opposition with the court. the Proof of Service was filed but the Opposition was not. *Id.* See Dckt. 66.

Debtor seeks to have the order dismissing the case vacated, per Federal Rule of Civil Procedure 59 and 60(b).

TRUSTEE’S OPPOSITION

Chapter 13 Trustee David Cusick filed a Response on July 27, 2020. Dckt. 76. Trustee admits that he received a copy of Debtor’s Opposition but unfortunately Debtor did not file, and Trustee is not required to file documents received unless the document is erroneously delivered to Trustee. *Id.*, at ¶ 1. Trustee further notes that Debtor has still failed to file a new Chapter 13 Plan. *Id.*, at ¶ 2.

As this Response was filed prior to the hearing granting the Motion to Dismiss, Trustee argued that the Motion to Dismiss should be granted unless Debtor files his opposition with the Court and either files a modified plan or indicates by a reasonable date certain when the plan will be filed and when it will be set for hearing. *Id.*, at p. 2.

APPLICABLE LAW

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

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

- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

FED. R. CIV. P. 60(b). A Rule 60(b) motion may not be used as a substitute for a timely appeal. *Latham v. Wells Fargo Bank, N.A.*, 987 F.2d 1199, 1203 (5th Cir. 1993). The court uses equitable principles when applying Rule 60(b). *See* 11 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 2857 (3d ed. 1998). The so-called catch-all provision, Federal Rule of Civil Procedure 60(b)(6), is “a grand reservoir of equitable power to do justice in a particular case.” *Uni-Rty Corp. V. Guangdong Bldg., Inc.*, 571 F. App’x 62, 65 (2d Cir. 2014) (citation omitted). While the other enumerated provisions of Rule 60(b) and Rule 60(b)(6) are mutually exclusive, relief under Rule 60(b)(6) may be granted in extraordinary circumstances. *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 863 & n.11 (1988).

A condition of granting relief under Rule 60(b) is that the requesting party show that there is a meritorious claim or defense. This does not require a showing that the moving party will or is likely to prevail in the underlying action. Rather, the party seeking the relief must allege enough facts that, if taken as true, allow the court to determine if it appears that such defense or claim could be meritorious. 12 JAMES WM. MOORE ET AL., MOORE’S FEDERAL PRACTICE ¶¶ 60.24[1]–[2] (3d ed. 2010); *see also Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984).

Additionally, when reviewing a motion under Rule 60(b), courts consider three factors: “(1) whether the plaintiff will be prejudiced, (2) whether the defendant has a meritorious defense, and (3) whether culpable conduct of the defendant led to the default.” *Falk*, 739 F.2d at 463 (citations omitted).

DISCUSSION

As an initial policy matter, the finality of judgments is an important legal and social interest. The standard for determining whether a Rule 60(b)(1) motion is filed within a reasonable time is a case-by-case analysis. The analysis considers “the interest in finality, the reason for delay, the practical ability of the litigant to learn earlier of the grounds relied upon, and prejudice to other parties.” *Gravatt v. Paul Revere Life Ins. Co.*, 101 F. App’x 194, 196 (9th Cir. 2004) (citations omitted); *Sallie Mae Servicing, LP v. Williams (In re Williams)*, 287 B.R. 787, 793 (B.A.P. 9th Cir. 2002) (citation omitted).

The court is grounded in equitable considerations when considering a Motion to Vacate, and Debtor’s Counsel has provided the court with grounds for granting their Motion. First, Debtor’s Counsel explains that an Opposition to the Motion to Dismiss was to be filed and indeed served on Trustee. Trustee confirms that such Opposition was received. Unfortunately, Counsel failed to file the

Opposition itself and only the Certificate of Service was filed. Counsel takes responsibility for this error. Further, the court will not take actions against a Debtor where Debtor has not been at fault for the failure to file a pleading that might have changed the outcome of the Motion to Dismiss.

However, there are still delinquency concerns and a failure to file a modified plan.

As of the June 2020 filing of the Motion to Dismiss, the Debtor had made \$34,455.54 in payments and was \$9,220.00 in default under the plan payments. Dckt. 62. Under the Debtor's confirmed plan, payments of \$3,795.00 a month were required. Dckt. 2. After allowing for \$379 a month for Trustee fees and \$66.66 a month for Debtor's counsel fees (if amortized over 60 months), that would leave \$3,349.34 to fund the plan disbursements.

The confirmed Plan required payments of \$2,444.35 a month to Wells Fargo Bank, the Class 1 creditor with a deed of trust on Debtor's residence, for which there was a \$16,760.89 prepetition arrearage. Plan ¶ 3.07(c); Dckt. 2.

Debtor also provides for two priority claims in Class 5. The Internal Revenue Service has filed Proof of Claim No. 7-1 asserting a priority claims of \$60,028.31, with a general unsecured claim of \$7,627.73, and the California Franchise Tax Board filed Amended Proof of Claim 13-2 asserting a priority claim of \$15,515.08 and a general unsecured claim of \$10,459.87.

The two priority claims total \$75,543.39, which over a sixty month plan would require monthly plan disbursements of \$1,259.05.

These minimum required disbursement under the Chapter 13 Plan total:

WFB Current Mortgage and Arrearage Disbursement.....	\$2,444.35
Class 5 Priority Claims.....	<u>\$1,259.05</u>

Minimum Plan Disbursements.....	\$3,703.40
---------------------------------	------------

However, the above does not take into account there was \$9,220.00 in default as of June 1, 2020, and there is another \$7,406.80 that has to be made up for July and August 2020 defaults. That additional \$16,627.60, if spread over the remaining 45 months of the Plan is an additional \$369.50 a month.

With the additional amounts, it appears that any plan advanced by the Debtor, if payments started in September 2020, would have to be at least \$4,201.45 a month (\$3,795.00 current payment, \$369.50 for the additional post-petition arrearage, and \$36.95 for the additional Chapter 13 Trustee fees).

Thus, even if the Debtor were to make a 0.00% dividend on general unsecured claims, the monthly pay payment jumps to \$4,201.45.

While explaining the mistake that occurred, neither the Motion nor supporting declaration of Debtor's counsel (Dckt. 75) show a likelihood of success on the merits (prosecuting, confirming, and performing a Chapter 13 Plan) if the dismissal is vacated. Rather, it appears that Debtor needs to "hit the reset button" and proceed with a new case and a new 60 months for a plan.

However, in the belatedly filed Opposition to the Motion to Dismiss, the substance of which is not addressed in the present Motion, it states that Debtor intends to prosecute a 84 month plan using the CARES Act addition to the Bankruptcy Code for debtors in this situation. Extending the plan for the additional time permitted under these amendments would have the same effect.

With respect to feasibility, Debtor has not provided as an exhibit the modified plan and motion to confirm that Debtor intends to file and immediately prosecute if the court vacates the dismissal order.

At the hearing, **XXXXXXXXXX**

Grounds ~~exist/do not exist~~ pursuant to Federal Rule of Civil Procedure 60(b) and Federal Rule of Bankruptcy Procedure 9024 to vacate the order dismissing this case.

Therefore, in light of the foregoing, the Motion is **XXXXXXXXXX** .

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 Set Aside Dismissal of Case filed by Robin Arlene Harland and Thomas Scott Harland (“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 **xxxxxx**.

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

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

Sufficient Notice Not 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 18, 2020. By the court's calculation, 54 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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).

<p>The Motion to Confirm the Amended Plan is XXXXX.</p>

The debtor, Jerline Linda Wallace ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for:

1. \$11,900.00 paid through May 25, 2020,
2. \$1,850.00 for seven (7) months, commencing June 25, 2020,
3. Plus lump sum payment from sale of real property to pay all lien holders on real property in full, on or before December 25, 2020, of \$100,000.00, or an amount necessary to complete the Plan,
4. With a 100 percent dividend to unsecured claims totaling \$32,644.97

Amended Plan, Dckt. 118. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CREDITOR'S OPPOSITION

U.S. Bank Trust National Association ("USB Creditor") holding a secured claim filed an Opposition on June 23, 2020. Dckt. 121. USB Creditor opposes confirmation of the Plan on the basis that:

- A. Plan improperly modifies USB Creditor's secured claim by failing to provide for adequate protection of the claim. USB Creditor asserts that the full amount of the regular contractual amount is necessary to "adequately protect" its interests pending the sale of the Property.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on July 22, 2020. Dckt. 132. Trustee opposes confirmation of the Plan on the basis that:

- A. Proposed Plan still fails to provide for adequate protection of a secured claim.
- B. Motion, Plan, and Declaration differ as to the dividend to the general unsecured creditors.
- C. The approximate payoff according to Trustee's records is well above the amount listed in the proposed plan.

CREDITOR'S OPPOSITION

Charles H. Evans ("Evans Creditor") holding a secured claim filed an Opposition on July 28, 2020. Dckt. 135. Creditor opposes confirmation of the Plan on the basis that:

- A. Motion to Confirm is brought in bad faith.
- B. Debtor's Plan is not feasible.
- C. The proposed Plan does not provide for Evans Creditor's claim under the Family Law Judgment.

Debtor filed a Response on August 3, 2020 addressing the oppositions filed, which is discussed below. Dckt. 138.

DISCUSSION

Modification of an Obligation Secured Only by Principal Residence

USB Creditor argues that Debtor's Plan is an improper modification of a claim secured only by a security interest in real property that is Debtor's principal residence. The Plan proposes reduced adequate protection payments of \$1,300.00 per month.

At this juncture the court must note that the proposed plan does not propose to “reduce” an adequate protection payment that this court previously ordered, but to establish a reasonable adequate protection payment as provided for by Congress in 11 U.S.C. § 361. What USB Creditor appears to argue that it is necessary to have the full contractual payment made monthly to “adequately protect” its interests in the collateral.

USB Creditor has filed Proof of Claim 1-1 stating that it has a secured claim in the amount of \$392,956.47 (including arrearage in the amount of \$18,869.67 as of the petition date), secured by a first deed of trust against the property commonly known as 3195 Dover Ave, Fairfield, California. Debtor’s Schedules indicate that this is Debtor’s primary residence.

In Proof of Claim 1-1 USB Creditor admits that the value of the Property exceeds the claim, stating that its entire claim is fully secured (there being no unsecured portion). Interestingly, USB Creditor failed to complete the Proof of Claim form and left blank the required information from a creditor stating what it values the property securing the claim. Proof of Claim 1-1, § 9.

Debtor did not fail to provide the information as required in completing the Schedules, and on Schedule A/B lists the Property and states under penalty of perjury that the fair market value is \$740,000. With that value, USB Creditor is more than adequately protected by an almost 100% equity cushion. See *In re Mellor*, 734 F.2d 1396, 1400 (9th Cir. 1984); or even a stable value, not declining is sufficient adequate protection, *United Savings Association of Texas v. Timbers of Inwood Forest*, 484 U.S. 365 (1988).

USB Creditor not providing any basis for the proposed adequate protection payment of \$1,300 a month will not adequately protect its interest in the Property, the opposition is overruled. In reality, no adequate protection payment is required in light of the apparent 100% equity cushion.

Lump Sum Payment from Sale of Property

The proposed plan calls for:

Plus lump sum payment from sale of real property to pay all lien holders on real property in full, on or before December 25, 2020, of \$100,000.00, **or an amount necessary to complete the Plan**

Plan, at p. 1 and 7 (emphasis added).

According to Trustee’s records, the approximate payoff amount is \$153,778.66, to which he refers to as “well-above” the \$100,000.00 listed in the nonstandard provisions of the proposed plan.

Debtor estimate approximately \$133,644.34 in proceeds after the sale of the real property. Moreover, Debtor argues that Trustee seems to include in the calculations Class 1 arrears and Class 2 creditors with secured interest in the subject property, that would be paid off with the total proceeds from the sale of the real property, which is estimate to be \$267, 288.78. Dckt. 138, p. 2. Debtor states that she is not opposed to correcting the actual total payoff amount in the order confirming the plan. *Id.*

Inconsistent Dividend Amounts

As to Trustee's assertion that dividend for unsecured general claims differ between the filed documents, Debtor contends that she expects to receive enough funds from her portion of the proceeds of the sale of real property to fund the plan at a 100% dividend. *Id.* Debtor states that she is not opposed to clarifying that creditors with general unsecured claims are to receive a 100% in the order confirming the plan. *Id.*, at p. 1.

Debtor states in the Reply, Dckt. 138, that she will be filing a motion to sell, and that requests that this hearing be continued and be heard in conjunction with the motion to sell.

At the hearing, **XXXXXXXXXX**

FINAL RULINGS

54. [19-26014-E-13](#) [MJD-3](#) JAMES MOREN
Matthew DeCaminada MOTION FOR DETERMINATION OF
POST-PETITION MORTGAGE FEES,
EXPENSES, AND CHARGES OF
WILMINGTON SAVINGS FUND
SOCIETY, FSB
6-25-20 [\[53\]](#)

Final Ruling: No appearance at the August 11, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on June 25, 2020. By the court's calculation, 47 days' notice was provided. 28 days' notice is required.

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

The Motion for Determination of Post-Petition Mortgage Fees, Expenses and Charges is Denied without prejudice.

James Edward Moren, Chapter 13 Debtor ("Debtor") objects to the attorney's fees listed in the Notice of Post-Petition Mortgage Fees, Expenses, and Charges filed by Wilmington Savings Fund Society, FSB d/b/a Christiana Trust ("Creditor") on March 30, 2020, and requests the court order an accounting for the determination of fees claimed, pursuant to FED. R. BANKR. P. 3002.1(e). Further, Debtor requests that the objection to such fees be sustained and the \$982.50 fees be reduced to \$0.00.

SERVICE OF PROCESS ISSUE

The Certificate of Service states that the service of the Motion and Supporting pleadings have been served as required by Federal Rule of Civil Procedure 4 and Federal Rule of Bankruptcy Procedure 7004 and 9014(b) was made by mailing the pleadings as follows:

Wilmington Savings Fund Society, FSB
d/b/a Christiana Trust, not individually but
as trustee of Pretium Mortgage Acquisition Trust
c/o Rushmore Loan Management Services
PO Box 55004
Irvine, CA 92619-2708

and

Aldridge Pite, LLP
Attn: Wendy Locke
4375 Jutland Dr., Ste 200
PO Box 17933
San Diego, CA 92177

Cert. of Serv., Dckt. 56.

Proof of Claim 3-1 has been filed for Wilmington Savings Fund Society, FSB, d/b/a Christiana Trust, not individually but as trustee of Pretium Mortgage Acquisition Trust (“WSFS, Trustee”). The creditor is WSFS, Trustee. Proof of Claim 3-1 is signed by Wendy Locke, Esq., as the creditor’s attorney.

Unfortunately, the Trustee, Wilmington Savings Fund Society, FSB has not been served. There is nothing in the record to show that Rushmore Loan Management Services is the agent for service of process or that is where WSFS, Trustee is located. Further, there is no showing that the “mere” attorney for WSFS, Trustee in this case is WSFS, Trustee’s agent for service of process.

Going to the FDIC website to find banks with FDIC insurance provides the following information about WSFS, Trustee:

Wilmington Savings Fund Society, FSB (FDIC # 17838)

Active Insured Since February 6, 1958

Data as of: August 5, 2020

Wilmington Savings Fund Society, FSB is an active bank

FDIC Certificate#:	17838	Established:	February 18, 1832	Corporate Website:
Headquarters:	500 Delaware Avenue Wilmington, DE 19801 New Castle County	Insured:	February 6, 1958	Web site not available
		Bank Charter Class:	Savings Association	Consumer Assistance:
		Primary Federal Regulator:	Office of the Comptroller of the Currency	http://www.helpwithmybank.gov
Locations:	96 domestic in 4 states, 0 in territories, and 0 in foreign locations	Secondary Federal Regulator:	Consumer Financial Protection Bureau	Contact the FDIC about:
				Wilmington Savings Fund Society, FSB

<https://research2.fdic.gov/bankfind/detail.html?bank=17838&name=Wilmington%20Savings%20Fund%20Society%2C%20FSB&searchName=WILMINGTON%20SAVINGS%20FUND%20SOCIETY%2C%20FSB&searchFdic=&city=&state=&zip=&address=&searchWithin=&activeFlag=&searchByTradename=false&tabId=2>.

An internet search turns up several websites, including that for WSFS that show its officers. Additionally, WSFS, Trustee's counsel has been identified and can be asked to identify her client and the agent for service of process (either voluntarily or pursuant to a Rule 2004 subpoena).

There not having been service on this Creditor, the court cannot purport to adjudicate its rights.

APPLICABLE LAW

Federal Rule of Bankruptcy Procedure 3002.1(e) provides as follows:

“On motion of a party in interest filed within one year after service of a notice under subdivision (c) of this rule, the court shall, after notice and hearing, determine whether payment of any claimed fee, expense, or charge is required by the underlying agreement and applicable nonbankruptcy law to cure a default or maintain payments in accordance with §1322(b)(5) of the Code.”

FED. R. BANKR. P. 3002.1(e).

Computation of Prevailing Party Attorney's Fees

Unless authorized by statute or provided by contract, attorney's fees ordinarily are not recoverable as costs. Cal. Code Civ. Proc. § 1021; *International Industries, Inc. v. Olen*, 21 Cal. 3d 218, 221 (Cal. 1978). The prevailing party must establish that a contractual provision exists for attorney's fees and that the fees requested are within the scope of that contractual provision. *Genesis v. Krasne*, 47 Cal. 2d 241 (1956). In the Ninth Circuit, the customary method for determining the reasonableness of a professional's fees is the “lodestar” calculation. *Morales v. City of San Rafael*, 96 F.3d 359, 363 (9th Cir. 1996), amended, 108 F.3d 981 (9th Cir. 1997). “The ‘lodestar’ is calculated by multiplying the

number of hours the prevailing party reasonably expended on the litigation by a reasonable hourly rate.” *Morales*, 96 F.3d at 363 (citation omitted). “This calculation provides an objective basis on which to make an initial estimate of the value of a lawyer’s services.” *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). An attorney’s fee award based on the lodestar is a presumptively reasonable fee. *In re Manoa Fin. Co.*, 853 F.2d 687, 691 (9th Cir. 1988).

In rare or exceptional instances, if the court determines that the lodestar figure is unreasonably low or high, it may adjust the figure upward or downward based on certain factors. *Miller v. Los Angeles County Bd. of Educ.*, 827 F.2d 617, 620 n.4 (9th Cir. 1987). Therefore, the court has considerable discretion in determining the reasonableness of a professional’s fees. *Gates v. Duekmejian*, 987 F.2d 1392, 1398 (9th Cir. 1992). Having this discretion is appropriate “in view of the [court’s] superior understanding of the litigation and the desirability of avoiding frequent appellate review of what essentially are factual matters.” *Hensley*, 461 U.S. at 437.

DISCUSSION

Creditor filed a Notice of Post-Petition Mortgage Fees, Expenses, and Charges on or about March 30, 2020 (“Notice”). Doc. (4). The Notice states the following:

- | | |
|----------|---|
| Line 5. | \$300.00 for “bankruptcy/Proof of claim fees,” incurred on October 31, 2019 |
| Line 7. | \$82.50 for five post-filing “Property inspection fees” incurred on October 10, 2019, November 27, 2019, December 30, 2019, January 31, 2020, and February 27, 2020 |
| Line 11. | \$250.00 for “Preparation of 410A” incurred on October 31, 2019 |
| Line 12. | \$350.00 for “plan review” incurred on November 4, 2019, |

for a total of \$982.50. *Id.*

The court is unable to determine whether Creditor is entitled to the fees as stated in the Notice on the basis that Creditor has failed to provide the necessary information required to make such a determination. Creditor has not attached to the Notice billing statements that include the billing rate or hours worked by the attorneys for which the fees are requested, or the basis (contract, statutory) to claim such amounts.

But, the court cannot ex parte, without Creditor being afforded Due Process rule against Creditor.

Because Movant will be starting from scratch with proper service, the Motion is denied without prejudice.

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

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

The Motion for Determination of Post-Petition Mortgage Fees, Expenses, and Charges of Wilmington Savings Fund, FSB d/b/a Christina Trust filed by the Chapter 13 Debtor, James Edward Moren (“Debtor”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing.

IT IS ORDERED that Motion is denied without prejudice due to lack of service on the Creditor whose rights were put at issue.

55. [19-24383-E-13](#) **JONATHON NICKELS** **MOTION TO MODIFY PLAN**
[MS-1](#) **Mark Shmorgon** **6-15-20 [30]**

Final Ruling: No appearance at the August 11, 2020 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on June 14, 2020. By the court’s calculation, 58 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

The Motion to Confirm the Modified Plan is granted.
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The debtor, Jonathon Nickels (“Debtor”) seeks confirmation of the Modified Plan to match the exact proofs of claims of all timely filed claims and cure delinquency caused by loss of employment due to COVID-19. Declaration, Dckt. 33. The Modified Plan provides monthly plan payments of \$1,950.00 for months 12 thru 84, and a 0.0 percent dividend to unsecured claims totaling \$18,407.34. Modified Plan, Dckt. 34. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on July 16, 2020. Dckt. 37. Trustee opposes confirmation of the Plan on the basis that:

- A. Plan may not be feasible.

DISCUSSION

Feasibility

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). According to the Chapter 13 Trustee, the Plan will complete in 86 months. The proposed plan payments will total \$142,350.00, where the amount required to pay creditors is \$128,929.65, and Trustee fees will total approximately \$14,235.00. Thus, the Plan may not be confirmed.

Trustee notes that the plan may be feasible if Debtor were to increase plan payments to \$1,962.00 a month for the remaining 73 months.

On July 16, 2020, Debtor filed a Response stating that Debtor agrees with the Trustee that the payment should be \$1,962.00 and proposes to resolve the \$12.00 per month payment discrepancy by requesting the court amend the amount through the order confirming the plan. Dckt. 40.

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, Jonathon Nickels ("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, amended as follows:

Plan payment shall be \$1,962.00 per month for months 12 through 84.

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 August 11, 2020 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 24, 2020. By the court’s calculation, 48 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion).

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.

<p>The Motion to Confirm the Modified Plan is granted.</p>

The debtors, Luciano Venture and Magelin Ventura (“Debtor”) seek confirmation of the Modified Plan because the outbreak of the COVID-19 pandemic led to a decrease in Debtor’s work hours. Additionally, unexpected expenses as a result of Debtor’s brother-in-law passing caused Debtor to fall behind in payments. Declaration, Dckt. 74. The Modified Plan provides for \$2,605.56 per month for 30 months, then \$2,950.00 per month for 10 months, and then \$3,450.00 per month for 40 months, and a 0.0 percent dividend to unsecured claims totaling \$30,904.00. Modified Plan, Dckt. 72. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on July 14, 2020. Dckt. 79. Trustee opposes confirmation of the Plan on the basis that the Plan will complete in 84 months, not the 80 proposed, because of conflicting plan provisions.

DISCUSSION

Post-Petition Arrearage

Under Class 2A section of the proposed plan, Debtor has scheduled post-petition arrearage in the amount of \$2,185.00 with a monthly dividend of \$55.00.

Trustee's records indicate 3 monthly post-petition payments are in arrears for a total of \$6,966.66. Trustee requests the Order Confirming reflect that the Trustee shall pay the ongoing arrears amount of \$5,194.55 as a separate claim at the rate of \$140 per month to pay the ongoing arrears within the 50 months remaining.

Debtor filed a Reply indicating they do not oppose a clarification of the additional provisions as suggested by Trustee.

The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtors, Luciano and Magelin Ventura ("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 24, 2020, as amended with the following:

The Trustee shall pay the ongoing arrears related to the Class 1 claim, as a separate claim at the rate of \$140.00 per month; and

The Plan term is a total of 84 months;

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 August 11, 2020 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 23, 2020. By the court's calculation, 49 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

<p>The Motion to Confirm the Modified Plan is granted.</p>

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, James Larry Walker ("Debtor"), has provided evidence in support of confirmation.

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Amended Response no longer opposing the confirmation on August 7, 2020. Dckt. 109. However, Trustee points out that Debtor has not filed a Supplemental Schedule I but that Supplemental Schedule J indicates Debtor's income remains \$5,140.48.

The 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 Chapter 13 Plan filed by the debtor, James Larry Walker ("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 Chapter 13 Plan filed on June 23, 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.

58. [18-27160](#)-E-13 **CLAUDIA/EDWARD JENKINS** **MOTION TO MODIFY PLAN**
[PGM-3](#) **Peter Macaluso** **6-24-20 [67]**

Final Ruling: No appearance at the August 11, 2020 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 24, 2020. By the court's calculation, 48 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

<p>The Motion to Confirm the Modified Plan is denied without prejudice.</p>
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The debtor, Claudia Jenkins and Edward Riley Jenkins ("Debtor") seek confirmation of the Modified Plan to begin making plan payments after losing business income due to the COVID-19 related stay at home orders. Declaration, Dckt. 70. The Modified Plan provides for monthly plan payments of \$1,135.00 commencing July 2020 for 60 months, and a 0.0 percent dividend to unsecured claims totaling \$31,965.21. Modified Plan, Dckt. 71. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on July 16, 2020. Dckt. 80. Trustee opposes confirmation of the Plan on the basis that:

- A. Plan and Declaration state conflicting plan payment amounts and Plan might not be feasible if the correct amount is the lower amount.

DISCUSSION

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). Debtor's Motion and Plan propose a monthly payment of \$1,135.00, where the Declaration states Debtor proposes a plan payment of \$1,730.00. If the Plan control, Debtor's proposed plan payment of \$1,135.00 is less than the proposed monthly dividend of \$1,175.00 to the Internal Revenue Service in Class 2. Thus, Debtor's Plan would not be feasible with a plan payment of \$1,135.00 and calculates to 82 months, but would complete timely with plan payments at \$1,730.00. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Debtor filed a Reply indicating that they will file a new plan that addresses Trustee's objections. Dckt. 83.

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

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

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

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

IT IS ORDERED that Motion to Confirm the Modified Plan is denied without prejudice, and the proposed Chapter 13 Plan is not confirmed.

Final Ruling: No appearance at the August 11, 2020 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor’s Attorney on July 21, 2020. By the court’s calculation, 21 days’ notice was provided. 14 days’ notice is required.

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

The hearing on the Objection to Confirmation of Plan is continued to 2:00 p.m. on September 5, 2020, to be heard in conjunction with the Motion to Value Secured Claim.

The Chapter 13 Trustee, David Cusick (“Trustee”), opposes confirmation of the Plan on the basis that the Plan relies on a pending Motion to Value Collateral that has been continued to September 15, 2020.

DISCUSSION

Debtor’s Reliance on Motion to Value Secured Claim

A review of Debtor’s Plan shows that it relies on the court valuing the secured claim of Travis Credit Union, MET-1. The hearing on this motion has been continued to September 15, 2020. Without the court valuing the claim, the Plan may not be feasible. *See* 11 U.S.C. § 1325(a)(6).

Debtor filed an Opposition acknowledging Trustee’s reliance on the pending Motion to Value Collateral but asserts that the junior lien at issue was included as a debt in Debtor’s previous Chapter 7 case, 12-40896. Debtor asserts that since he received a discharge in the prior case, Debtor contends that he is therefore not personally obligated on that debt on that “his plan is not required to provide for a debt for which he is not personally liable.” Opposition, p. 2:11-12.

No legal authority is provided for Debtor's assertion (subject to the certifications arising under Fed. R. Bankr. P. 9011) that since he obtained a discharge in the prior case, then he is not "personally liable" on the debt and he does not need to make any provision for a secured claim in his current case.

Debtor's assertion would appear to misunderstand the effect of a discharge under 11 U.S.C. § 524, which is not an exoneration of the obligation, but "merely" a federal injunction against enforcing the obligation against Debtor's exempt assets and post-petition acquired assets. 11 U.S.C. § 524(a)(2), (3). The obligation remains and may be enforced against the collateral securing the obligation. *Johnson v. Home State Bank*, 501 U.S. 78 (in which the Supreme Court does use the word "extinguish" in discussing the § 524(a) injunction). See also 11 U.S.C. § 506(a)(1) which provides:

(1) An allowed claim of a creditor secured by a lien on property in which the estate has an interest, . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property, . . . and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. . . .

Thus, the "nonrecourse" secured debt is made into an allowed secured and an allowed unsecured claim by virtue of a debtor electing to avail him/herself of the right to value the secured claim pursuant to 11 U.S.C. § 506(a).

More significantly, Debtor's Plan actually does provide for this secured claim, listing it in Class 2, stating that the secured claim is \$0.00 and the balance is a general unsecured claim. In Class 7, Debtor provides for general unsecured claims to receive a 0.00% dividend. Turning the secured claim into an allowed general unsecured claim does not negatively impact the feasibility of the Plan.

Final Ruling: No appearance at the August 11, 2020 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 26, 2020. By the court’s calculation, 46 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

The hearing on the Motion to Confirm the Modified Plan is continued to 2:00 p.m. on September 5, 2020.

The debtor, Kimberly Jeanette Williams-Brito (“Debtor”) seeks confirmation of the Modified Plan to catch up with payments due to financial hardship as a result of state legislation AB 705 (did not receive payment for extra teaching units), new expenses (paying for her son’s college tuition), and COVID-19 (purchasing equipment for remote teaching). Declaration, Dckt. 33. The Modified Plan provides for monthly plan payments of \$525.00 commencing on August 2020 for 36 months, and a 0.5 percent dividend to unsecured claims totaling \$201,839.90. Modified Plan, Dckt. 34. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on July 14, 2020. Dckt. 40. Trustee opposes confirmation of the Plan on the basis that:

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

DISCUSSION

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor has failed to explain the extra teaching units she referred to in her Declaration in support of the confirmation. Debtor's original Schedule I did not itemize payments related to "extra-teaching units." Debtor has also failed to provide the amounts or any relevant details related to son's tuition and purchase of equipment. Additionally, Debtor's Declaration refers to two different number of months for the plan.

Trustee requests that Debtor adequately address the issues discussed above by filing a Supplemental declaration and current Schedules I and J.

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

Debtor filed a Reply explaining that due to COVID-19 restrictions and precautions, counsel has been unable to meet with Debtor to review Debtor's schedules and draft a declaration that addresses the Trustee's concerns. Dckt. 43, ¶ 1. Debtor requests a 14 day continuance in order to meet with counsel to address these matters thoroughly. *Id.*

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, Kimberly Jeanette Williams-Brito ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Motion to Confirm the Modified Plan is continued to 2:00 p.m. on September 5, 2020.

Final Ruling: No appearance at the August 11, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 22, 2020. By the court's calculation, 50 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.

<p>The Motion to Confirm the Amended Plan is granted.</p>
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11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Violet Hayes ("Debtor") has provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on July 21, 2020. Dckt. 70. 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, Violet Hayes ("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 22, 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.

62. [19-21404](#)-E-13 **RANDLE HODGE** **MOTION TO MODIFY PLAN**
[BLG-1](#) **Chad Johnson** **6-26-20 [41]**

Final Ruling: No appearance at the August 11, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 26, 2020. By the court's calculation, 46 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy 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.

<p>The Motion to Confirm the Modified Plan is granted.</p>

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Randle Hodge ("Debtor"), has filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response indicating non-opposition on July 14, 2020. Dckt. 51. 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, Randle Hodge (“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 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 Trustee will submit the proposed order to the court.

Final Ruling: No appearance at the August 11, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 1, 2020. By the court’s calculation, 41 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy 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.

<p>The Motion to Confirm the Modified Plan is granted.</p>

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Brooks Parfitt (“Debtor”), has filed evidence in support of confirmation.

The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Response indicating non-opposition on July 14, 2020. Dckt. 27. Trustee, however, requests that the following language be included in the order confirming the plan:

“In the event that the debtor receives a tax refund, proceeds in excess of \$2,000.00 shall be turned over to the Trustee.”

Id.

The Modified Plan, as amended with Trustee’s statement above, 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, Brooks Parfitt (“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 as amended with the following language:

“In the event that the debtor receives a tax refund, proceeds in excess of \$2,000.00 shall be turned over to the Trustee”

filed on July 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 Trustee will submit the proposed order to the court.

Final Ruling: No appearance at the August 11, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 29, 2020. By the court's calculation, 43 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

<p>The Motion to Confirm the Modified Plan is granted.</p>

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtors, Paul Roberts and Pamela Roberts ("Debtor"), have filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response indicating non-opposition on July 21, 2020. Dckt. 70. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtors, Paul Roberts and Pamela Roberts ("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 29, 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.

65. [18-20415-E-13](#) **KARINA HANGARTNER** **MOTION TO MODIFY PLAN**
[DJC-2](#) **Diana Cavanaugh** **6-23-20 [66]**

Final Ruling: No appearance at the August 11, 2020 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 23, 2020. By the court's calculation, 49 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy 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.

<p>The Motion to Confirm the Modified Plan is granted.</p>

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Karina Hangartner ("Debtor"), has filed evidence in support of confirmation.

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response indicating non-opposition on July 14, 2020. Dckt. 75. However, Trustee notes that Debtor does not specifically identify the delinquency that caused the motion to modify, or the changes which require her plan payment to be reduced. *Id.* at p. 1. Nevertheless, Trustee points out the delinquency was only one month of missed

payments for June 2019, and a failure to increase payments as required by the notice of mortgage change filed March 6, 2019. *Id.* The proposed modified payment is only \$25 less than the original plan payment, and the Debtor would only be \$1,234 delinquent under the original plan if the mortgage payment had not increased. *Id.*

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, Karina Hangartner (“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 23, 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.

Final Ruling: No appearance at the August 11, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 26, 2020. By the court's calculation, 46 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy 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.

<p>The Motion to Confirm the Amended Plan is granted.</p>
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11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Michelle Rosiles ("Debtor") has provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on July 21, 2020. Dckt. 79. 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, Michelle Rosiles ("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 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.

67.	<u>20-22443</u> -E-13 <u>DPC-1</u>	MATTHEW/DIANNA PARKER Julius Cherry	CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK 6-24-20 [15]
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Final Ruling: No appearance at the August 11, 2020 hearing is required.

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

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

Final Ruling: No appearance at the August 11, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 11, 2020. By the court's calculation, 61 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.

<p>The Motion to Confirm the Modified Plan is granted.</p>

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Mark Haynes ("Debtor"), has filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response indicating non-opposition on July 16, 2020. Dckt. 61. 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, Mark Haynes ("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 11, 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.

69. [18-25861-E-13](#) **MICHAEL SCHILLACI** **MOTION TO CONFIRM PLAN**
[MOH-2](#) **Michael Hays** **6-25-20 [51]**

Final Ruling: No appearance at the August 11, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 25, 2020. By the court's calculation, 47 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

<p>The Motion to Confirm the Modified Plan is granted.</p>

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Michael Shillaci ("Debtor"), has filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on July 16, 2020. Dckt. 60. 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, Michael Schillaci (“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 25, 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.

Final Ruling: No appearance at the August 11, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 26, 2020. By the court’s calculation, 46 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy 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.

<p>The Motion to Confirm the Modified Plan is granted.</p>

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtors, Leonardo and Fely Mercurio (“Debtor”), have filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Response indicating non-opposition on July 16, 2020. Dckt. 117. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtors, Leonardo Mercurio and Fely Mercurio (“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 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 Trustee will submit the proposed order to the court.

71. [20-20973-E-13](#) **JOSE CASTRO**
[MEV-1](#) **Marc Voisenat**

MOTION TO CONFIRM PLAN
6-13-20 [43]

Final Ruling: No appearance at the August 11, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 12, 2020. By the court's calculation, 60 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.

<p>The Motion to Confirm the Amended Plan is granted.</p>
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11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Jose Castro ("Debtor") has provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on July 28, 2020. Dckt. 50. 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, Jose Castro (“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 12, 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 August 11, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 24, 2020. By the court's calculation, 48 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

<p>The Motion to Confirm the Modified Plan is granted.</p>

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Yvonne Johnson ("Debtor"), has filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response indicating non-opposition on July 16, 2020. Dckt. 89. 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, Yvonne Johnson ("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 24, 2020, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

73. [16-20096-E-13](#) **DERICK GOLDEN** **MOTION TO MODIFY PLAN**
[MJD-2](#) **Matthew DeCaminada** **6-30-20 [51]**

Final Ruling: No appearance at the August 11, 2020 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 30, 2020. By the court's calculation, 42 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).

Debtor's Certificate of Service (Dckt. 56) fails to list two parties for whom requests for special notice were filed: Bank of New York Mellon (Request, Dckt., filed by Seth Greenhill, Esq.) and JP Morgan Chase Bank, N.A. (Request, Dckt. 13, filed by Jennifer Wong, Esq.) The Clerk's list of parties in this file includes Bank of New York Mellow, for which counsel is shown as Sean Ferry, Esq. (an attorney at the same firm as Sean Greenhill, Esq.); and U.S. Bank, N.A., for which counsel is shown as Jennifer Wong.

On the U.S. Bank, N.A. Request for Notice, it identified JP Morgan Chase Bank, N.A. as its servicing agent.

Pursuant to Federal Rule of Bankruptcy Procedure 9036, electronic service of these pleadings were made by the Clerk of the Court on Mr. Ferry and Mr. Wong. However, their respective clients were not served as identified in each Request for Notice.

Reviewing the Second Modified Chapter 13 Plan, Dckt. 53, the court notes that it does not alter the treatment of the claim of U.S. Bank, N.A., Trustee. Proof of Claim No. 6-1 was filed for U.S. Bank, N.A., as Trustee, with notices to be sent to and payments made on the claim sent to JP Morgan Chase Bank, N.A.

The Second Modified Plan continued to provide for the U.S. Bank, N.A. claim as a Class 4 secured claim, for which the automatic stay is modified and Debtor must make the monthly payments directly to this creditor. There being no change in the existing plan treatment for this claim, the failure to mail a notice directly to the creditor or its servicer is not fatal to this Motion.

The Trustee also notes that when filed the Hon. Christopher M. Klein was listed as the judge and it was stated to be a Department C case. This case was reassigned to Department E and the current judge on the same day the Motion was filed. Prior to June 30, 2020, the Chapter 13 cases for Trustee Cusick were divided between Judges Klein and Sargis, with all of the hearings set in Department E (Sargis), courtroom 33. While the identified judge and department changed the same day the Motion was filed, it was correctly set to the right courtroom at the correct time.

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.

<p>The Motion to Confirm the Modified Plan is granted.</p>

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Derick Golden ("Debtor"), has filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response indicating non-opposition on July 21, 2020. Dckt. 62. 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, Derick Golden ("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 30, 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.

Final Ruling: No appearance at the August 11, 2020 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on May 11, 2020. By the court’s calculation, 64 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

<p>The Motion to Confirm the Amended Plan is granted.</p>
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The debtor, Virginia Hall (“Debtor”) seeks confirmation of the Chapter 13 Plan. The Amended Plan provides for monthly payments of \$900.00 for 60 months, and a 0% dividend to unsecured creditors totaling \$409,440.42. Plan, Dckt. 19. 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 17, 2020. Dckt. 35. Trustee opposes confirmation of the Plan on the basis that:

- A. The plan relies on a Motion to Value Collateral which is set for hearing on the same day as this motion.
- B. Debtor may not be entitled to Chapter 13 relief under 11 U.S.C. § 109(e).

DEBTOR'S REPLY

Debtor filed a reply to Trustee's Opposition. Dckt. 38. Debtor believes the Motion to Value Collateral will be granted, due to a lack of opposition being filed. The Debtor also alleges that this is a "fairly straightforward" case, where the court can exercise discretion under Section 105 and argues that denying Chapter 13 relief would waste judicial resources.

Additionally, Debtor notes that the IRS was originally listed in Debtor's schedules for \$8,000.00, but filed a claim for only \$119.80.

DISCUSSION

Debtor's Reliance on Motion to Value Secured Claim

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of Carmax Business Services, GC-2. The Motion to Value has been granted and Creditor's claim was valued at \$7,000.00, as sought by the Debtor. Thus, this Objection is solved in favor of Debtor.

Section for 109 Amount of Debt Compliance

Debtor does not qualify for Chapter 13 treatment because the unsecured debt limit as calculated under 11 U.S.C. § 109(e) has been exceeded. 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 \$419,275.00 and non-contingent, liquidated, secured debts of less than \$1,257,850." The court in *In re Scovis* held that eligibility for Chapter 13 should be determined by the debtor's "originally filed schedules." Debtor's original Summary of Schedules indicates her unsecured claims total \$422,940.42. Schedule E/F, Dckt. 10, at 19. In her Amended Schedule E/F, Debtor states having a total of \$401,940.42 in unsecured claims. Amended Schedule E/F, Dckt. 18 at 11.

Debtor's legal authority asserted to rebut the Trustee's citation to the Bankruptcy Code is stated to be 11 U.S.C. § 105(a). No explanation is provided how 11 U.S.C. § 105(a) can be used to rescind the statutory provisions of the Bankruptcy Code.

The Trustee computes the unsecured debt as there being \$21,750 in priority unsecured claims, general unsecured claim in the amount of \$401,940.42, and then adds what Debtor asserts will be (presuming that valuation and bifurcation of a secured claim pursuant to 11 U.S.C. § 506(a)) an unsecured claim of \$7,500 from the projected amount that the secured claims exceed the value of collateral on Scheduled D.

Beginning with the original Schedules E and F, the unsecured claims as computed by Debtor are \$422,690.42. 11 U.S.C. § 109(e) limits an individual who may legally seek relief under Chapter 13 to one who has "noncontingent, liquidated, unsecured debts of less than \$419,275." Reading the plain language of 11 U.S.C. § 109(e), Congress bars Debtor from seeking relief through Chapter 13.

Debtor offers the court no legal basis for a federal judge to rewrite 11 U.S.C. § 109(e) and create a special, this Debtor only, law to grant Debtor relief that exists for no one else.

On April 16, 2020, Debtor filed an "amended" Schedule E/F. Dckt. 18. As this court has

addressed in other context, amended schedules date back to the filing of this case, as opposed to supplemental schedules which relate to updated information that is valid effective at some time after the filing of the case. Debtor amends Schedule E/F to state that the priority unsecured claims are \$21,750 and the general unsecured claims are \$401,940.42. This amount totals \$423,690.42, again in excess of the \$419,275 statutory maximum established by Congress in the Bankruptcy Code.

Though not further amending Schedule E/F, in the Reply, Debtor states that the Internal Revenue Service, for whom Debtor listed an \$8,000 unsecured claim on Schedule E/F, has a proof of claim (Debtor failing to identify the proof of claim) saying that the amount really owed as of the commencement of this case is \$119.80. Reply, ¶ 5; Dckt. 38.

The Internal Revenue Service filed Proof of Claim 7-1 on April 6, 2020. This is ten days before Debtor filed Amended Schedule E/F stating that the Internal Revenue Service priority unsecured claim was \$8,000. Dckt. 18.

In looking at Proof of Claim No. 7-1, it clearly states that the claim in the amount of \$119.80 is just **ESTIMATED FOR 2018 AND 2019 TAX YEARS** because:

1 LIABILITY IS ESTIMATED BASED ON AVAILABLE INFORMATION
BECAUSE THE RETURN HAS NOT BEEN FILED. THIS CLAIM MAY BE
AMENDED AS NECESSARY AFTER THE DEBTOR FILES THE RETURN
OR PROVIDES OTHER REQUIRED INFORMATION.

2 LIABILITY IS ESTIMATED BASED ON AVAILABLE INFORMATION
BECAUSE THE RETURN HAS NOT BEEN FILED. THIS CLAIM MAY BE
AMENDED AS NECESSARY AFTER THE DEBTOR FILES THE RETURN
OR PROVIDES OTHER REQUIRED INFORMATION.

Proof of Claim 7-1, Footnotes 1, 2 (emphasis in original).

It appears that the Internal Revenue Service Proof of Claim is based on inaccurate and incomplete information, with the actual information known by the Debtor that Debtor's actual tax obligation is substantially larger.

Additionally, Proof of Claim 7-1 states that Debtor has not filed pre-petition tax returns for 2018 and 2019. At the hearing, the Debtor addressed the failure to file the tax returns for the two pre-petition years stating that her CPA advised her that no tax returns were required to her limited income. However, it now appears that there may be some pass through income that may require returns to be filed and the Debtor is addressing that with her CPA now.

Additionally, the Debtor is reviewing the Schedules to determine the actual good faith estimate of claims, fearing that Debtor may have over estimated what filing the original Schedules, with review may result in amended Schedules being filed.

The Trustee concurred with the court continuing the hearing to allow the Debtor to address these issues and make such corrections to the Schedules as appropriate.

Debtor's Declaration
filed July 28, 2020

Debtor filed a second Declaration in support of the First Amended Plan. Dckt. 45. Debtor testifies that she was advised by her CPA that she did not need to file taxes in 2018 and 2019 because her business, California Consignment, suffered a loss of \$204,732.00 in 2018 and \$119,957.00 in 2019. Dckt. 45. Debtor further testifies that she originally listed the business' tax debts on her personal Schedules but has now filed amended Schedules to reflect that she does not personally owe any corporate tax debt. *Id.* at ¶ 4. *See* Exhibit A, Dckt. 46. Debtor notes that with this amendment, her total debt is \$416,740.42, of which \$409,740.42 is unsecured. *Id.* at ¶ 5.

Trustee's Status Report
filed August 3, 2020

Trustee states that he no longer opposes the Motion to Confirm as the Motion to Value was granted and has reviewed Debtor's amended Schedule E/F and the Declaration, which show that the total of unsecured claim is now \$409,7410.42. Dckt. 48.

Debtor having filed amended schedules and a declaration addressing Trustee's opposition, and Trustee no longer opposing the confirmation, the Amended Plan complies with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is confirmed.

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Virginia Ashley Rose Hall ("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 April 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.

Final Ruling: No appearance at the August 11, 2020 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 23, 2020. By the court’s calculation, 49 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion).

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

<p>The Motion to Confirm the Modified Plan is granted.</p>

The debtor, Jhenai Roble (“Debtor”) seeks confirmation of the Modified Plan to account for all filed claims and to adjust for the interrupted plan payments after decrease in income due to COVID-19. Declaration, Dckt. 26. The Modified Plan provides monthly plan payments of \$3,191.00 for the remainder of the plan, and a 100 percent dividend to unsecured claims totaling \$10,152.18. Modified Plan, Dckt. 28. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on July 14, 2020. Dckt. 35. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor seeks to schedule post-petition arrears not included in the additional provisions.

DISCUSSION

Post-Petition Arrearage

Under Class 1 section of the proposed plan, Debtor has scheduled a “POST-Pet,” which Trustee takes to mean post-petition arrearage in the amount of \$3,481.00 with a monthly dividend of \$70.00. The claim is not included in Section 7.1 Additional Provisions.

Trustee’s records indicate 3 monthly post-petition payments are in arrears for a total of \$5,194.55, which Trustee will disburse when sufficient money is on hand to disburse a complete monthly post-petition payment. Trustee requests the Order Confirming reflect that the Trustee shall pay the ongoing arrears amount of \$5,194.55 as a separate claim at the rate of \$104 per month to pay the ongoing arrears within the 50 months remaining.

Debtor filed a Response indicating agreement with Trustee’s arrearage assessment and agrees to the order confirming the plan should reflect the ongoing arrears amount of \$5,194.55 as a separate claim at the rate of \$104/per month.

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, Jhenai Roble (“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 23, 2020, as amended to include the following:

Trustee shall pay the ongoing arrears amount of \$5,194.55 as a separate claim at the rate of \$104 per month to pay the ongoing arrears within the 50 months remaining

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 August 11, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on June 29, 2020. By the court's calculation, 43 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

<p>The Motion to Confirm the Modified Plan is granted.</p>

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Pedro Verduzco ("Debtor"), has filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response indicating non-opposition on June 21, 2020. Dckt. 37. 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, Pedro Verduzco ("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 29, 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.